

SEC10

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THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:) File No. HO-13388-A
) AMENDED 12-5-2018
KIK INTERACTIVE) AMENDED 12-11-2018

EXHIBIT

21

19-cv-5244-AKH

WITNESS: Peter Heinke

PAGES: 1 through 264

PLACE: U.S. Securities and Exchange Commission
 100 F Street, N.E.

Washington, D.C. 20549

DATE: Thursday, September 20, 2018

The above-entitled matter came on for hearing,
pursuant to notice, at 9:40 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

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1 APPEARANCES:
 2 On behalf of the Securities and Exchange Commission:
 3 BRENT MITCHELL, ESQ.
 4 JAMES MURTHA, ESQ.
 5 DAVID MENDEL, ESQ.
 6 STEPHAN SCHLEGELMILCH, ESQ.
 7 100 F Street, N.E.
 8 Washington, D.C. 20549
 9 (202)551-4683 mitchellB@sec.gov
 10 On behalf of the Witness:
 11 LUKE CADIGAN, ESQ.
 12 BRETT DEJARNETTE, ESQ.
 13 JOAN LI, ESQ.
 14 Cooley LLP
 15 500 Boylston Street
 16 Boston, Massachusetts 02116
 17 (617)937-2480 lcadigan@cooley.com
 18 KENNETH LENCH, ESQ.
 19 Kirkland & Ellis
 20 655 Fifteenth Street, N.W.
 21 Washington, D.C. 20005
 22 (202)879-5270
 23 Also Present:
 24 Steven Jones, Videographer
 25 Nick Joyson

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1 PROCEEDINGS
 2 THE VIDEOGRAPHER: This begins Disc No. 1.
 3 We are now on the record. The time is 9:40 a.m.
 4 BY MR. MITCHELL:
 5 Q Great. Actually, could you pronounce your
 6 last name so I don't do it wrong?
 7 A Heinke.
 8 Q Heinke?
 9 A Like Heineken, but Heinke.
 10 Q Like Heineken? Heinke?
 11 A Yeah.
 12 Q Perfect. All right. So if you could put
 13 up your right hand. Do you swear to tell the truth,
 14 the whole truth, and nothing but the truth?
 15 A Yes, I do.
 16 Whereupon,
 17 PETER HEINKE
 18 was called as a witness, and having been first duly sworn,
 19 was examined and testified as follows:
 20 EXAMINATION
 21 BY MR. MITCHELL:
 22 Q Okay. Could you please state your full
 23 name and spell your name for the record?
 24 A Peter Albert Heinke, H-e-i-n-k-e.
 25 Q Great. Good morning. My name is Brent

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1 Mitchell. With me today are James Murtha and David
 2 Mendel. And we'll be joined by our colleague, Stephan
 3 Schlegelmilch. We are members of the staff of the
 4 enforcement division of the United States Securities
 5 and Exchange Commission and officers of the Commission
 6 for purposes of this proceeding.
 7 This is an investigation by the United
 8 States Securities and Exchange Commission in the matter
 9 of Kik Interactive, File Number HO-13388, to determine
 10 whether there have been violations of certain
 11 provisions of the federal securities laws.
 12 However, the facts developed in this
 13 investigation might constitute violations of other
 14 federal or state, civil or criminal laws.
 15 Prior to the opening of the record, I gave
 16 you a copy of the formal order. That was this?
 17 A Yes.
 18 Q It will be available for you to read more
 19 of them or examine if you want to during the course of
 20 the proceeding.
 21 Have you had an opportunity to review the
 22 formal order?
 23 A Yes.
 24 Q Do you have any questions about it?
 25 A No, other than that one typo.

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1 Q That's okay. All right. Also, before the
2 opening, I gave you what is called the Form 1662.
3 A Yes.
4 Q Yeah, it is the Form 1662. It's marked as
5 Exhibit 1. Sometimes we're going to talk about these
6 exhibit numbers.
7 A Got it.
8 Q And then we'll talk about -- the numbers on
9 pages, we'll talk about those as well.
10 A Okay.
11 Q Have you had the opportunity to read
12 Exhibit 1 previously?
13 A Yes.
14 Q Okay. Do you have any questions about it?
15 A No.
16 Q Are you represented today by lawyers?
17 A Yes.
18 Q Okay.
19 MR. MITCHELL: Can you guys introduce
20 yourselves for the record?
21 MR. DEJARNETTE: Brett DeJarnette from
22 Cooley on behalf of the witness and Kik.
23 MR. CADIGAN: Luke Cadigan of Cooley.
24 MR. LENCH: Kenneth Lench of Kirkland &
25 Ellis.

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1 MS. LI: Joan Li on behalf of Cooley.
2 MR. MITCHELL: All right. And, Brent, can
3 you just put on the record who everybody represents?
4 MR. DEJARNETTE: Sure. So Cooley and
5 Kirkland & Ellis represent Kik, Ted Livingston, Peter
6 Heinke, Tanner Philp, Phillip Yang, and Eileen Lyon.
7 Cooley represents Erin Clift, Eran Ben-Ari, Fred
8 Wilson, and Union Square Ventures.
9 MR. MITCHELL: As we discussed beforehand,
10 we also have marked as Exhibit 165 a copy of the
11 subpoena.
12 (SEC Exhibit No. 165 was marked for
13 identification.)
14 BY MR. MITCHELL:
15 Q Is that a copy of the subpoena that you are
16 appearing pursuant to today?
17 A Yes.
18 Q I will take that and add it to the pile
19 here. Is there any reason you'd be unable to give
20 complete and accurate testimony today?
21 A No.
22 Q All right. And then the last bit of
23 housekeeping, I'm going to give you what we previously
24 marked as 166.
25 (SEC Exhibit No. 166 was marked for

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1 identification.)
2 THE WITNESS: Yes.
3 BY MR. MITCHELL:
4 Q Exhibit 166 on its face has background
5 questionnaire. Is this a background questionnaire that
6 you filled out?
7 A Yes.
8 Q And when you filled it out, was it complete
9 and accurate?
10 A Yes.
11 Q All right. I'll actually just take that
12 back. If there's some point you want to ask about it,
13 I'll just leave it on the table.
14 A Okay.
15 Q Actually, from the questionnaire, I -- the
16 questionnaire discussed sort of where you went to
17 college and some of the jobs that you've had between
18 college and coming to Kik Interactive. But could
19 you -- just at a resume level, can you sort of describe
20 to me how your career --
21 A Sure.
22 Q We have the names of companies here.
23 A Yeah.
24 Q But if you could sort of explain how you
25 ended up at Kik, sort of the path.

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1 A Sure. So if I go back from the university,
2 I was in co-op. Worked for KPMG, which at that time
3 was called Ernst & Ernst. Through the mergers, it's
4 now KPMG. I worked there until about 1986 where I
5 joined a startup that was in the gift novelty business.
6 We sold that to another group and we took three
7 companies and we did what was called a reverse
8 takeover. And we took that to Toronto Stock Exchange
9 about two weeks before the whole markets crashed. So
10 it was a bit of a disappointment.
11 But the companies, the whole mandate of
12 that operation was to take small companies where the
13 entrepreneur was no longer able to grow it because it
14 was taking on too much risk. And we would give them
15 something to take money off the table and help them
16 grow that company. So they were pretty diverse
17 industries, but that was they were -- that was the main
18 mandate of the company.
19 But then, when it sort of -- the market
20 stopped, we weren't raising any more capitals, so I
21 ended up going out and doing different transactions. I
22 hooked up with a company called Simmons Communications,
23 which was in the two-way radio business. It was a
24 small public company. I wasn't interested in joining
25 full-time because it limited amount of sales, but I

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1 consulted with them.
 2 And then, once we had a strategic plan
 3 done, we joined them on full-time as the CFO. And we
 4 grew that company organically and through acquisition
 5 over four years to about 200 million. We sold that
 6 whole group to a company called Secure Core out of the
 7 UK. We also -- in that process, you'll note that I was
 8 a director and CFO of a company called Intech
 9 Diversified. So we take in certain assets and we put
 10 them in that U.S. company. And that was a U.S. company
 11 that we sold.

12 And then, after that, we applied for
 13 license in what was called MMDS. It's a radio
 14 frequency license that you apply for bandwidth from the
 15 CRTC or equivalent of the -- was it FCC.

16 Q Yup.

17 A And we did various initiatives with respect
 18 to getting -- proving -- like proving that the
 19 technology worked and we applied for a license. But
 20 unfortunately, it a competitive process. You don't
 21 bid. You compete in front of the hearing. And we lost
 22 that bid to another company. So about -- through that
 23 process, I learned a lot about digital television,
 24 interactive television.

25 And in between there, I did two different

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1 that was the first form of regulated gaming in Canada.
 2 So we built that. It was a typical scenario where even
 3 though the technology exists, the business aspects
 4 weren't there. The cable companies wanted a piece of
 5 the betting handle. The Ontario Jockey Club didn't
 6 want to split it. But they ended up with using that
 7 system. And we also -- with the technology we did for
 8 the broadcast, MMDS, we proved to the tracks that if
 9 you telecast a horse race in the home, that you would
 10 actually increase your betting handle as opposed to
 11 reducing, which is what their concern was.

12 And from that, they started two major
 13 national broadcast channels, the Racing Network, which
 14 is horse racing on TV. And then we did a lot of work
 15 in the U.S. with a company called Magna Entertainment,
 16 doing similar sort of things for them. So that was --
 17 so we did that. Then we got into more interactive
 18 television. And one of the big things -- the problems
 19 with interactive television was there wasn't a lot of
 20 opportunities.

21 Like they had -- Britain was -- interactive
 22 TV was really big. BSkyB was pushing it, and a lot of
 23 it was game shows. But you couldn't do game shows here
 24 because they were all taped. So I talked to Alex
 25 Trebek, you know, from Jeopardy, and he was the best

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1 transactions. One was help some friends of mine. We
 2 started an airline. We flew the Raptors and the Jays
 3 and the Leafs. And we flew a lot of the Canadian and
 4 American sports teams. So I was there for a year to
 5 get that up and running, and finance and structure it.

6 And then I also helped my brother purchase
 7 his company at the time and -- which was an
 8 acrylics-based company in manufacturing. I then went
 9 to -- I then went with another partner. We started a
 10 company called ETV Interactive, which is noted on the
 11 questionnaire. ETV's mandate was -- what we learned
 12 was with the digital set top box, it was like a mini
 13 computer and would be now -- you could do interactive
 14 initiatives.

15 So a lot of it was in security and testing
 16 how the thing would work. During that course of time,
 17 we also developed the first form of regulated gaming in
 18 Canada with the Ontario Jockey Club. So at the time,
 19 the Canadian legislation was that you could not accept
 20 a bet through a computer online. And what we had
 21 developed was what was DTMF tone converter where you
 22 would take keystrokes in. And we would convert them
 23 into telephone account betting.

24 And then, the Ontario Jockey Club took that
 25 to the Justice Department and got that approved. And

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1 man of one of our directors. And so we corresponded
 2 with him. And he was telling us that, no, he doesn't
 3 see how it could happen because they tape Jeopardy five
 4 times in a day. Right?

5 So what we said was, okay, well, how can we
 6 create content that's visual. So we got into using
 7 gaming engines, so using virtual reality. So we built
 8 with -- shared in college basically a virtual game
 9 show. So you could redo the content all the time
 10 because it was like a game. And then you could
 11 generate and then you'd keep the -- manage the
 12 integrity of the questions. So people could play from
 13 home, and they play from home to become a character on
 14 TV.

15 So we would virtualize you on TV. And when
 16 you spoke into the phone, your voice would be -- and we
 17 could redo things like that. So it was a very -- but
 18 it was a very difficult thing to do. And then, at that
 19 time, if you recall, poker -- online poker was a big
 20 thing. But, again, it was regulated very strictly, so
 21 we didn't want to get into the poker thing. But the TV
 22 stations could then start advertising.

23 So NBC said they were losing \$80 million
 24 compared to what ESPN was getting for advertising. So
 25 we built -- for celebrity poker, we're building a mass

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1 audience game. And then the regulators shut down
2 advertising for that stuff, so we basically stopped.
3 And that was the end of that company. We just -- we
4 didn't lose any money. It was all our own money. And
5 we -- I went on to do something else.

6 So then I helped some friends in the
7 healthcare sector, which I didn't know much about. And
8 we bought a nuclear medicine facility for them. And
9 that was about a two-week project. They were trying to
10 buy it for about six months. And then that became the
11 basis of these cardiac centers where we were changing
12 the way cardiac care was delivered to the public within
13 the regulated healthcare system.

14 So it wasn't -- you couldn't get a -- a lot
15 of times, what happens, you go to your doctor. Doctor
16 refers you to a lab. Lab does a test, sends it back to
17 your doctor. Doctor says, "Oh, you got a problem,
18 Brent. I've got to get you a cardiologist," another
19 six weeks. And you end up having a 12-week cycle where
20 someone could have a heart problem. Whereas what we
21 did was we had -- if the person came in, they were
22 tested. If the doctor on the referral form ticked that
23 he needed a test, he would do the test.

24 And then, right there, and he would see a
25 cardiologist that day. And we didn't undermine the

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1 and running, then my role is more from a build stage.
2 And so he -- that really impressed me. And then he had
3 a business plan that was, like, 45 pages long that I
4 didn't understand until page ten probably. But it was
5 all in mobile. And he had all these different
6 initiatives he wanted to do, and the company was called
7 Unsynced, and which was a really tough name.

8 And so I said, "Look, I don't need any
9 money right now because I'm earning quite well. So
10 I'll help you out." And our mandate was -- with him
11 was to get the plan to simplified 12 slides that could
12 describe exactly what he was doing. And our toll gate
13 for whether we were successful or not, we have a friend
14 that was a marketing person. He was very strong. But
15 he didn't understand technology.

16 And then I have another friend that was
17 working a lot in the copyright issues for music. And
18 so he knew -- because what I said to Ted was you need
19 to focus on one piece, like what it is. And so we
20 picked music. And we also had the relationship with
21 Blackberry, which didn't have a strong media play. So
22 we presented that one initiative to these two guys.
23 They both bought in.

24 Brad said, "How can I help you?" And I
25 said, "Well, Unsynced isn't a really good name. It

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1 hospital because all our cardiologists also had to work
2 at the hospital, which most doctors didn't want to do.
3 And so a lot of people that had problems were in the
4 hospital having angioplasty within a day and a half.
5 So it was in our universal healthcare system, but it
6 cut out a lot of the inefficiencies that were in the
7 system.

8 So that was where I was working when I got
9 a call from a friend of mine who said, "Listen, there's
10 this son of a partner of mine, and he's got this new
11 business idea. And he wants to get it going. And he
12 asked me if I knew somebody who had interactive media
13 experience and startup." And so I said, "Sure. I'll
14 go meet with him."

15 So that's when I first met Ted. And I
16 asked, "And so what do you need? Do you need some
17 money?" He goes, "No, no, I got all the money in the
18 world." I'm going, "You do?" And he goes, "Yeah." He
19 says, "I got \$50,000." "Oh, so you already raised the
20 money." He says, "No, it's 50,000 of my own money." I
21 said, "Really?" And he goes, "Yeah." He said, "I
22 saved in the co-op terms and everything else."

23 And that was probably what impressed me
24 quite a bit. Like, I was meeting a number of different
25 entrepreneurs because once the cardiac centers were up

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1 sounds broken to me." Ted is an engineer. He looked
2 at it from an engineering perspective. And so we did a
3 naming thing. And then I actually came up with the
4 name Kik, which being an accountant, I was quite proud
5 of, marketing initiative. So that's how we started
6 Kik. And then I worked with him. I'm also still
7 working at the Core Care on and off.

8 And then we launched in April of 2009, the
9 first -- I'm sorry. It was in 2010. It was a
10 messenger with music tied up into it. And then we
11 basically then -- actually, it also included text
12 messaging. So at the time, there was -- and this is a
13 big strategic decision for Kik. It was the aspect of
14 that phone numbers are probably the easiest way to get
15 somebody. But we didn't think in the new world that we
16 wanted that, that you wanted your public phone number
17 out there everywhere.

18 And so that's when we went to user names.
19 And so then relaunched in 2009. And then, as a result,
20 things took off so much in 2009, I joined pretty much
21 full time, like November that year.

22 So that's how my journey went.

23 **Q** Sure. No, I appreciate it. When you
24 joined Kik in 2009, was there a publicly-facing
25 business at that point or was it still --

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1 A No. It's still --

2 Q -- incubating?

3 A It was incubating, yeah.

4 Q And the first product comes out in early
5 2010?

6 A Yes. It was -- I'm just trying to think
7 right now. There was a point in time where we were --
8 because it had an -- initially, the product was
9 delivering music, so it was actually the first
10 messenger that was developing an app of music. And
11 we -- what we found was that there were other people --
12 the music licensing, even though we were moving really
13 quickly, like with Universal and all these different
14 companies, it was taking a long time.

15 And we needed to -- someone else had come
16 out with something called PingChat. And I think it was
17 in about December 2009. I saw the article and said,
18 "We got to move over and, like, just get into the
19 messaging space." And so that was done. And then by
20 April of 2010, we launched the initial beta version
21 that was with phone numbers and tried to integrate with
22 SMS. And then in October of 2010, we launched the
23 product as it exists now.

24 That included, like -- because one of the
25 things, if you don't have phone numbers and that we --

Page 20

1 Q Okay. But you said something about April
2 of 2017, your title changed?

3 A Yes. So then -- my role -- there's
4 actually a board meeting we held where I took on,
5 became CFO and senior vice president of corporate
6 development.

7 Q All right. And was there -- were you a
8 director when you initially joined the company?

9 A Yes. Sorry. Not when I initially joined.
10 When we did the first round of financing, Ted had three
11 seats. Ted had three seats available to him. He had
12 an independent -- there was an independent director,
13 Sam Spadafora. And then in the A round, Fred Wilson
14 joined the board. And then, also, Adam Ludwin from RE
15 was on the board at the time.

16 Q Did you keep the CFO role until you left
17 the company?

18 A Yes. Yes.

19 Q Yes. So while you were working at Kik, who
20 was your boss?

21 A Ted.

22 Q The whole time?

23 A Yes.

24 Q And I know you described sort of the COO
25 role. But in your full role of CFO and COO, what did

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1 there was an aspect where you could scan your address
2 book and it would connect you with other people that
3 were on Kik. And that's when things really took off
4 that fall. We went from, like, zero to a million
5 people in 15 days and to 21 in another six days. And
6 we had everybody in the world phoning us up to get
7 involved.

8 Q When you joined Kik, what was your role at
9 the beginning?

10 A It was a consultant at first, but then I
11 sort of took the CFO, COO title. But I should just
12 describe the CFO -- COO title was more relating to the
13 nontechnical aspects. So Chris Best, who was a
14 co-founder, he handled all of the operations relating
15 to the technical side. And I handled sort of all the
16 HR, accounting, all that sort of side.

17 Q And is that the title that you had through
18 your entire time working at Kik?

19 A Up until April of 2017, because it was just
20 getting too much. And I took on more of a corporate
21 development role, which was part of my background at
22 KPMG where we, you know, did acquisitions. So I did
23 the Rounds acquisition. And it was going on for
24 probably about, I think, six months anyway, six to
25 eight months. And we completed it in December of 2016.

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1 you do for Kik during that period?

2 A So a lot of it was -- in the initial stages
3 was helping to -- I had the HR side reporting to me, so
4 all that sort of stuff. It was locations, facilities,
5 management. It was working with sort of the A round
6 investors when we went and raised funding for that, and
7 the B round. We also did a bridge round between the A
8 and the B to, you know, prevent dilution.

9 And then we did a C round with Valiant, and
10 then we did a D round with Tencent. And then we did
11 the -- next in issue, we bought -- I bought Rounds. We
12 bought a company called Blink. We bought a company
13 called Endemic. Most of these were talent acquisitions
14 more so than product. But a lot of the -- like Rounds
15 especially was driven from -- initially from the fact
16 that we needed a video product incorporated into the
17 messenger.

18 That's what the marketing people were
19 telling us. So we had the choice of either buying or
20 building. And the thing I find with technical people a
21 lot, they want to build it internally, whereas there's
22 a lot of technology out there. And we managed to
23 identify this company called Rounds in Israel.

24 Q And in your role as CFO, what did you do?

25 A Pardon.

Page 22

1 Q What did you do in your role as CFO?

2 A So my role as CFO, we had all the
3 accounting and finance reporting to me. So we would
4 issue, like, a monthly dashboard to the board. We
5 had -- did all the internal reporting, structures, you
6 know, budgets, budget analysis, taking a look at some
7 of the various business models we were working on.
8 Those were sort of the main areas.

9 Q Where did you work?

10 A So we had an office, first of all, on -- it
11 was in -- called in the Accelerator Center. It was
12 like at -- but it's sort of an incubator type function.
13 It's in conjunction with the university. We started
14 there. And then we moved to a small 3,000-square-foot
15 office where we basically -- it was like an old
16 warehouse building the guy had renovated. And then --
17 because as we grew, it was quite flexible for us.

18 So for me, like flexibility in terms of
19 expenses was really important. So we didn't have to
20 sign a long-term lease. I think we had a three-month
21 notification clause. And we could keep growing in that
22 facility as we needed to. And now, what they're doing
23 is they're actually moving to a new facility.

24 Q And were those facilities in Waterloo?

25 A Yes. But we had also operations in --

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1 operations in Toronto, New York. And then we have --
2 where we bought Round, we were in a building. And we
3 just moved out of that building in Israel.

4 Q In Tel Aviv?

5 A Yes. Yeah.

6 Q And did they move into a new building in
7 Tel Aviv?

8 A Yes.

9 Q I'm going to jump all the way to the end.
10 At some point, did you leave -- stop working at Kik?

11 A Uh-huh.

12 Q So can you just tell me about that, how
13 that came about and how your roles changed?

14 A I left April 30th. I mean, Ted and I
15 talked about it sort of in March. And then I was
16 coming up with the transition. Basically, I turned 60
17 in March. And I just -- you know, my daughter was at
18 home for the last year. My wife was -- has a vet
19 practice and she's under a lot of stress. And I wanted
20 to -- a bit of a change, reflection. The main driver
21 was a reflection that I wanted to.

22 There was another thing. I took -- I had a
23 physical, which I hadn't had in a while, in December.
24 And I had high blood pressure and prediabetic. And I
25 just thought I have to change my lifestyle. I was

Page 24

1 traveling a lot, like, in January and February in
2 Japan. During January to March, I was in Japan twice.
3 I was traveling a lot down at the States and also
4 Israel, and so it was a lot of traveling underway. And
5 I just needed a change, so --

6 Q And you left --

7 A So I'm on a consulting agreement now. So
8 it went from -- June 30th was the end date. And now
9 I've got a one-year consulting agreement with them.
10 And that's just on an as-needed basis. We had --
11 besides myself leaving the controller who worked for
12 me, Derek, he was a really strong person. He was also
13 the director of finance.

14 I knew he was going to leave at some point
15 because he had started a brewery with a couple of other
16 guys. And it was unfortunate that one of his partners
17 got killed in a car accident. So I knew that that was
18 going -- so within a month, he came to me and he said,
19 "Listen, I know you guys are in a tight situation, but
20 I need to go do this thing and I don't really have a
21 choice. But I'm here all the time."

22 So he actually helped us quite a bit, like
23 come in for a couple of days a week. And at that point
24 in time, it was like -- we weren't doing any
25 acquisitions or anything anymore. It was sort of calm

Page 25

1 from that, so it worked out okay.

2 Q And when you were saying you left Kik on
3 April 30th, was that April 30th --

4 A No. Left June 30th. Sorry.

5 Q Sorry. June 30th.

6 A Yes.

7 Q So you left Kik June 30th, 2018?

8 A Yes.

9 Q And then you -- then the next day, you
10 started as a consultant?

11 A Yes.

12 Q And I'm just going to do this quickly. I'm
13 just going to hand you what I've just marked
14 Exhibit 167.

15 (SEC Exhibit No. 167 was marked for
16 identification.)

17 THE WITNESS: Yeah.

18 BY MR. MITCHELL:

19 Q This is a multi-page document with the
20 Bates number KIK_00144219.

21 A Yes.

22 Q And it goes to 227. Whenever I give you
23 something, I want you to take whatever time you need to
24 look at it generally. My first question is going to
25 be: Do you recognize this document?

Page 26

1 A Yes.

2 Q What is it?

3 A This is a consulting agreement.

4 Q This is the consulting agreement that

5 started on July 1st?

6 A Yes.

7 Q And so what is your responsibilities?

8 A On this?

9 Q Yeah. What are you doing for Kik? What

10 have you been doing for Kik under this?

11 A Well, if you go to Schedule A, there are

12 some things, statements of continues in support with

13 respect to the regulatory issues such as this.

14 Assistance to a new CFO once he comes on. So right

15 now, there isn't one. So Brandon once in a while,

16 who's the controller, will fill me up.

17 He's a little bit junior, but I've been

18 helping out with a couple of things, ongoing support in

19 consulting as needed. There has been a number of

20 contacts that I had with respect to, like, people that

21 want to work with Kik in terms of the Kin currency.

22 So I've been helping out with that. And M

23 and A, until -- if this -- Brandon himself hasn't done

24 any M and A transactions or financing. So if something

25 came up, I'd help him with respect to that. And this

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1 was, like, for roughly 15 hours a month. And if it

2 went over, you know, we'd sit and talk. But sort of

3 that's -- it's been within that range, probably a

4 little bit more, but nothing major.

5 Q And the Number 3 on that, that's the --

6 you're doing work --

7 A Yeah.

8 Q -- with respect to the Kin and the

9 foundation.

10 A Right. Yeah.

11 Q What's Kin and the foundation?

12 A So Kin is with respect to the currency that

13 we have. There's been -- as I said, it's probably

14 intertwined a little bit with the Kin and the third

15 parties where I get calls on people because they know I

16 was involved from before. And they, you know, are

17 asking me like, you know, explain a little bit about

18 how the currency works and how they could get engaged.

19 I just got another e-mail yesterday, and it was from a

20 company called TimePlay.

21 I don't know if you're -- it's a guy that I

22 knew from way back. And he has a product that when you

23 go into the cinemas, before the movies play, there's

24 these games that are played up on the screen. You play

25 them with your mobile phone. I don't know if you're

Page 28

1 familiar with them.

2 So here is the whole issue, is that he

3 can't monetize. It's very difficult for him to

4 monetize outside of advertisers in that. And so he is

5 looking at incorporating Kin into his product. So it

6 would be used in -- you could use it in the theaters

7 and effectively earn Kin.

8 Q Sorry. And you are also -- so you're

9 assisting Kik with Kin and also the foundation?

10 A Yeah. The foundation is just like in

11 the -- I resigned from the foundation board when

12 William came on. And the foundation has its own

13 counsel now is my understanding. We just started. I

14 met with them prior. But Eileen drives that

15 transaction. And they -- I don't know where they're at

16 right now on that, but I've not been involved with sort

17 of anything there, you know. I was only on an

18 as-needed basis. And there hasn't been any calls or

19 anything.

20 Q I'm sorry. You said Eileen drives that

21 transaction. What transaction?

22 A Eileen drove the movement from two

23 separate counsel, so the foundation, right, with --

24 Q Eileen Lyon?

25 A Yes. With William Mougayer.

Page 29

1 Q Who's the new counsel?

2 A Borden Ladner.

3 Q Okay.

4 MR. MITCHELL: Anybody else have questions?

5 Why don't we -- let's just go off the record at 10:10.

6 THE VIDEOGRAPHER: We're off the record.

7 The time on the video monitor is 10:09 a.m.

8 (A brief recess was taken.)

9 THE VIDEOGRAPHER: We are back on the

10 record. The time on the video monitor is 10:17 a.m.

11 BY MR. MITCHELL:

12 Q During the break, did you have any

13 substantive conversations with the staff about this

14 case?

15 A No.

16 Q All right. So can you take -- like, sort

17 of the 2016 into 2017 period, what was Kik's sort of

18 line of business at that point?

19 A We were -- well, we had the messenger, and

20 we were building out on the messenger. And we were

21 looking at a, you know, new -- what ways we were going

22 to monetize. We had just finished the Credit Suisse

23 process or not finished it, but we had been through an

24 initial run of meeting with potential acquirers. And

25 we had just finished purchasing Rounds in Israel.

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1 And so there was a lot of integration going
2 on with that. Those were sort of the core things I was
3 responsible for at the time.

4 Q All right. So I'm going to sort of take
5 them in turn. The business -- so Kik's business at
6 that time was the messaging app?

7 A Yes.

8 Q All right. And then what was the Credit
9 Suisse process that you were just discussing?

10 A We were looking at whether there might be
11 an interest for an acquirer of the business. So we
12 felt that strategically, we fit a void for a number of
13 different companies like Amazon and others like that.
14 And so that's why we started a process with Credit
15 Suisse, to take a look if there was a fit with a larger
16 player.

17 Q And what was the result of the Credit
18 Suisse process?

19 A Of the initial ones we went to, there was
20 nobody really interested at that time in purchasing.
21 However, Credit Suisse felt we had the opportunity to
22 go back to a couple of them.

23 Q And did Kik go back to a couple?

24 A We said we would take a -- let's take a
25 break. And we looked at what different options were

Page 31

1 for the company at that time.

2 Q Is that the point at which one of the
3 options became some kind of digital asset?

4 A Yeah, one of them was. Yeah, currency.

5 Q Okay. We'll come back to that in a second.
6 And then the purchase of Rounds was -- the purchase of
7 Rounds was what you described earlier the -- driven by
8 the desire to acquire sort of video capability for the
9 messaging app?

10 A Video and technical people. Like
11 recruiting technical people is a real challenge.
12 Rounds had a lot of strong technical people.

13 Q In this time period, did you own shares of
14 Kik?

15 A Yes.

16 Q How much did you own?

17 A I own about a million shares.

18 Q What -- do you know what percent -- roughly
19 what percentage that is?

20 A No. It's 23 million, so it's a little bit
21 under four-something percent.

22 Q Who were the shareholders who you
23 considered to have significant stakes in --

24 A Well, Ted did. I mean --

25 MR. CADIGAN: Let him finish his question.

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1 THE WITNESS: Sorry.

2 BY MR. MITCHELL:

3 Q Yeah. This is exactly what we're talking
4 about. It happens all the time.

5 A Okay.

6 Q I'll just ask you the whole question.

7 A Got it.

8 Q Who were the shareholders who you
9 considered to have a significant stake in Kik?

10 A So Ted, myself, Chris Best, then the VCs,
11 which included Union Square Ventures, Foundation
12 Capital, Valiant, Tencent. And then we had some bridge
13 investors that were a part of a group of investors.

14 Q In terms of sort of a where you had a
15 million out of 23 million shares, what did
16 Mr. Livingston have?

17 A He has about -- well, it depends if you go
18 fully diluted. I think fully diluted works out to
19 41 percent.

20 Q And Mr. Best?

21 A He'd be the same as me.

22 Q And the VCs, either individually or as a
23 group --

24 A I can't --

25 MR. CADIGAN: Let him finish.

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1 BY MR. MITCHELL:

2 Q Yeah. Again, this happens all the time.

3 A Yes. It's part of my nature, too, so I
4 have to apologize.

5 Q We totally appreciate that.

6 A Okay.

7 Q The VCs, either individually or as a group?

8 A Individually -- as a group, probably about
9 30 percent.

10 Q Okay. In this time period, who would you
11 consider to be the key executives at Kik?

12 A From that time, we had Ted Livingston,
13 Chris Best. We had -- well, it depends if you go
14 before or after the Rounds acquisition. So just before
15 the Rounds acquisition, it was Ted Livingston, myself,
16 Chris Best, Alim Dhanji, Erin Clift. I think that was
17 it from a key executive standpoint.

18 Then when -- oh, sorry. Dave Simons, who
19 is VP of engineering. And then we had -- after the
20 Rounds acquisition, Eran Ben-Ari joined the executive
21 level, as did Dany Fishel.

22 Q And Mr. Best left the company?

23 A He left the company, yes, in about March, I
24 believe.

25 Q Of 2016?

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1 A No. 2017.
 2 Q 2017.
 3 A Yeah.
 4 Q And how did that come about?
 5 A He was the chief product officer. And he,
 6 I think, personally had burned out. And Eran was
 7 coming in to be more of the product manager at the
 8 time. But I don't really know at that group how they
 9 were all organized and how they were setting up, so --
 10 Q Have you stayed in touch with Mr. Best?
 11 A Yes.
 12 Q What's he doing now?
 13 A He started another startup. And it went
 14 through Y Combinator. And they're doing quite well.
 15 It's a subscription-based type business.
 16 Q You mentioned a person named Mr. or Ms.
 17 Dhangji?
 18 A Dhanji.
 19 Q Dhanji.
 20 A D-h-a-n-j-i, Alim.
 21 Q Alim. I'm sorry. That was the HR person?
 22 A Yes.
 23 Q Okay.
 24 A Chief people officer.
 25 MR. MENDEL: Just so I can bookmark it in

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1 THE WITNESS: Co-op students are students
 2 that are studying at university. And Waterloo is
 3 probably known worldwide for having the top co-op
 4 program where kids go to school for four months, and
 5 then they work for four months, starting right in the
 6 first year. So when they graduate, it takes them five
 7 years to get their degree, but they end up having two
 8 years of work experience. And they're very, very
 9 sought after.
 10 Bill Gates did most of his recruiting
 11 exclusively where he would come up to University of
 12 Waterloo and recruit. And so we had a lot of co-op
 13 students, both from Wilfrid Laurier, which is where I
 14 went to business school and also has a bit of
 15 programming. But that number could fluctuate depending
 16 on what the needs were.
 17 MR. MENDEL: Fluctuate from what to what?
 18 What's the base --
 19 THE WITNESS: It could fluctuate all the
 20 way down to zero, which was one of the things we looked
 21 at when we -- in looking at reducing the company's head
 22 count to up to 25.
 23 MR. MENDEL: Were these paid co-op
 24 students?
 25 THE WITNESS: Yes.

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1 time, when was the Rounds acquisition?
 2 THE WITNESS: December.
 3 MR. MENDEL: Of '16?
 4 MR. CADIGAN: You have to -- you shook your
 5 head.
 6 THE WITNESS: Ch, December of '16.
 7 BY MR. MITCHELL:
 8 Q Sorry. The other thing they tell you is
 9 she can't write down --
 10 A Yeah. Got it.
 11 Q We have to say out loud.
 12 A Okay.
 13 Q So, again, these are all the normal ways
 14 people talk.
 15 A Yeah. Okay. Great.
 16 Q We'll try to keep it --
 17 MR. MENDEL: So what was the -- can you
 18 tell me the approximate head count for the company
 19 after the Rounds acquisition all in?
 20 THE WITNESS: All in Kik and Rounds?
 21 MR. MENDEL: Yes, the combined company.
 22 THE WITNESS: Probably around 145 people.
 23 And the thing in that is that we have co-ops. We have
 24 a lot of co-ops.
 25 MR. MENDEL: What does that mean?

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1 MR. MENDEL: Okay. So could be as high as
 2 25?
 3 THE WITNESS: Yes.
 4 MR. MENDEL: Okay. So going into 2017, Kik
 5 had -- and this is an approximate number -- Kik had
 6 approximately 145 full-time employees?
 7 THE WITNESS: Yes.
 8 MR. MENDEL: And maybe as many as 25 co-op
 9 students?
 10 THE WITNESS: Sorry. I think the 145
 11 included some co-ops, but I can't really recall the
 12 count at that time.
 13 MR. MENDEL: I'm basically trying to get an
 14 order of magnitude.
 15 THE WITNESS: Yeah.
 16 MR. MENDEL: And after the Rounds
 17 acquisition, Kik had offices or had -- I guess we'll
 18 call it offices, in Waterloo, Ontario; is that right?
 19 THE WITNESS: Yes.
 20 MR. MENDEL: Tel Aviv, Israel?
 21 THE WITNESS: Yes.
 22 MR. MENDEL: And Manhattan?
 23 THE WITNESS: Yes.
 24 MR. MENDEL: Anywhere else?
 25 THE WITNESS: Toronto.

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1 MR. MENDEL: Toronto. Okay. What's the
2 geographic distance between Waterloo and Toronto?
3 THE WITNESS: About an hour drive.
4 MR. MENDEL: Thank you.
5 BY MR. MITCHELL:
6 Q At that point, you were on the board as
7 well?
8 A Yes.
9 Q So who were the -- were there sort of board
10 members who you considered sort of important or key?
11 A I think they were all treated equally.
12 Q Okay. Who was on the board at that point?
13 A So there was Sam Spadafora as chairman,
14 there was myself, Ted Livingston, Fred Wilson, Paul
15 Holland, and Jim Estill.
16 Q And did any of them have -- did they --
17 were any of them involved -- let me start over.
18 Did any of those folks -- other than you
19 and Ted, I mean, the outside of director. Did any of
20 them have sort of a role in day-to-day work with you,
21 Ted, or people at the company?
22 A No.
23 Q And, sorry, Mr. Spadafora, does he
24 represent a VC firm as well?
25 A No.

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1 Q Mr. Estill, does he?
2 A No.
3 Q Mr. Wilson is from USV?
4 A Yes. Yes.
5 Q And does anyone else -- did anyone else
6 from USV work for Kik?
7 A No.
8 Q And Mr. Holland was at Foundation Capital?
9 A Yes.
10 Q And did anyone else from Foundation Capital
11 work for Kik?
12 A No.
13 Q Same time period, who were the company's
14 lawyers?
15 A Okay. We had -- in Canada, we had LaBarge
16 Wasserstein. There's a lawyer by the name of James
17 Smith. He was our lawyer since day one, handled mostly
18 Canadian corporate affairs. We had Cooley. And then
19 I -- do you want just the firm or do you want the
20 individuals?
21 Q I just want the firms. Sure.
22 A Okay. So Cooley. And then we had Blakes
23 in Toronto. And then we have -- now we have like --
24 well, was it Kirkland? I forget.
25 Q Yes. Well, for the record, Ken works for

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1 Kirkland.
2 A Okay. I think that's -- and then we had
3 counsel in Israel called Meitar, M-e-i-t-a-r. I'm just
4 trying to think if we had any other counsel. Oh, we
5 had sort of trademark and patent. What's her name? I
6 can't recall her name right now. That's all they did,
7 was just do trademark review. And we would get a
8 report from them, but we didn't really do much with
9 them.
10 MR. MENDEL: Were they in the United States
11 or in Canada?
12 THE WITNESS: No. Was it Bernie? I can't
13 remember. No, they were in Canada. Starts with a P.
14 I can't remember. I get the -- I didn't ever talk to
15 any of the lawyers there.
16 MR. MENDEL: Probably means you're doing
17 something right with your life.
18 BY MR. MITCHELL:
19 Q So the messaging app that was the business
20 at that point, was there -- sort of -- can you just
21 sort of describe for me, like what was the -- what did
22 you view the messaging app's, you know, key feature to
23 be or the way it's distinguished itself, what it did?
24 A The big distinguishing feature with Kik is
25 that our philosophy from day one is that we shouldn't

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1 be -- we're about connecting people and letting people
2 connect freely and not have to worry about being in
3 control of their own privacy.
4 And as such, we use -- people could use
5 user names, and therefore go into -- so at the time,
6 when we launched that unique proposition, we were in
7 the early days one of the largest apps that would be
8 used cross-platform on all sorts of different
9 applications. So as an example, there were many other
10 VC investees from, let's say, USV that said that even
11 though we have our own messenger within our game or
12 whatever, everybody uses Kik.
13 And in World of Warcraft -- I'm not into
14 these games, but one of these big games where people
15 trade a lot of digital assets, people would not trade
16 with you unless you had a Kik ID in a lot of cases.
17 That's the -- that's how they traded in those areas.
18 So we had a very, very strong presence from that
19 standpoint.
20 But having a user name was really, really
21 key, and then we didn't collect anybody's information.
22 We didn't keep information on who you were, your age,
23 or anything like that.
24 Q What did you know about Kik's user base?
25 A We knew that once in a while we would do

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1 surveys. And that's about the extent of what we did.
2 We didn't really have a strong marketing group until
3 Erin joined.

4 Q Erin Clift?

5 A Yes.

6 Q Well, by, say, 2016, early 2017, what did
7 you know about Kik's user base?

8 A That it was aging, like we had a lot of
9 users that were in the sort of -- we were sort of a
10 very strong teen app initially when we started, because
11 people -- the value proposition at that time was that
12 people didn't have to have a phone number because you
13 could use Wi-Fi. But that became less of an issue,
14 right? So you could now phone -- you could now -- most
15 younger kids have phones.

16 That became less of a value prop. And then
17 a lot of people made friends on Kik, and then they
18 stayed with those friends for a period of time. So
19 that was -- so we saw the demographic go a little bit
20 older as the app grew longer. And then other apps came
21 in more -- I think as a messenger, we missed a little
22 bit the Snapchat type thing where people were -- where
23 pictures were probably far more relevant to kids than
24 just texting.

25 Q Did you have an understanding of the

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1 A Yes, we did.

2 Q How?

3 A We made money through a couple of different
4 things. We tried working with points, which then we
5 also had what we called promoted chats where people
6 could chat with brands. So points was one, promoted
7 chats was another. Those were the two main areas where
8 we made money.

9 Q And did Kik make significant revenue
10 compared to its expenses?

11 A No, because the points works, I think, more
12 so if you have user information, right? Because,
13 effectively, it would be brands that would purchase the
14 points and try and entice kids to work with them by
15 using the points or earn points. But we didn't have
16 much information on who they were really talking to or
17 their demographics. So the product would never --
18 never took off because of that standpoint. The --
19 advertising the brands are basically a lot of the input
20 into the ecosystem.

21 And so that model, we're trying to figure
22 out what's a model that would work without having us to
23 change our core philosophy of not collecting people's
24 information. So controlling your own privacy was
25 really the ultimate piece of Kik that I think was

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1 location or the country where people -- where your
2 users lived?

3 A Yeah, we had an idea roughly of what
4 country they were in.

5 Q And so how were they geographically
6 distributed?

7 A The largest part was in the U.S. And then
8 on a percentage of -- and then it changed over a period
9 of time. Like, initially, Scandinavia, we had, like, a
10 large percentage of the population there in Sweden and
11 Norway and Finland. Also, in Saudi Arabia, it's large
12 because women couldn't talk openly to men. So they use
13 a user name, so it was quite relevant there. And then,
14 in various parts of the world, like India, Australia.

15 Q And when you say the largest part was in
16 the U.S. --

17 A Yes.

18 Q -- do you have a feel in sort of end of
19 2016, early 2017, what percent --

20 (Simultaneous speakers.)

21 THE WITNESS: Yes, sir. In the -- roughly
22 around the -- say between the 60 to 70 percent level.

23 BY MR. MITCHELL:

24 Q And did Kik make money from the messaging
25 app?

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1 unique.

2 Q Did you pursue other strategies to try to
3 sort of monetize the messaging app?

4 A We took a look at different things, but I
5 don't -- I can't really recall. Like we would bounce
6 around product ideas, but those were sort of the two
7 core elements.

8 Q Were there -- did you have competitors that
9 were making money in other ways?

10 A Yes.

11 Q How were they making money?

12 A Facebook.

13 Q Yes. Okay.

14 A So Facebook would --

15 Q Please go on. What did Facebook do?

16 A Facebook would collect and have all of that
17 data and retention. And they would then sell that to
18 advertisers, who would then advertise and push
19 promotion to those people.

20 MR. MENDEL: Quick question, just to make
21 sure I understand your testimony. So given Kik's sort
22 of philosophy of not collecting user data, is it fair
23 to say that it was very difficult to monetize the app?

24 THE WITNESS: Yes. That was a challenge.

25 MR. MENDEL: Because brands want -- they

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1 want to know who they're targeting or selling to?

2 THE WITNESS: Exactly.

3 MR. MENDEL: Thank you.

4 BY MR. MITCHELL:

5 Q Same sort of time period, end of '16 into
6 early '17, how was the app doing in terms of users and
7 volume?

8 A It was -- we were struggling. I think it
9 wasn't unique to Kik. We were talking to Tencent. And
10 they had a number of investments around the world, and
11 they said they saw the same thing happening, that there
12 is dominant core players.

13 And it's difficult to compete in some of
14 those cases with some of those core players, and
15 Facebook being in our market, one of the largest ones.
16 So even Snapchat that raised a lot of money were still
17 suffering with user growth.

18 Q When you say it was struggling, were there
19 metrics that you used to measure that?

20 A It was always -- there was articles, and
21 you would -- nobody would publish necessarily. There
22 are metrics out there in the public, but you'd read
23 articles and they would say an estimate.

24 Q Internally at Kik, were there metrics that
25 you were using to measure the -- you know, when you

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1 in discovery and, you know, getting two-day friends was
2 working, like some of the metrics. It's either
3 currently starting, and they would start to -- were
4 coming up a little bit for that specific application.

5 Q Were there other metrics that were
6 important inside the company?

7 A When you're talking 2016, those were the
8 core metrics we would look at.

9 Q What about monthly average user or daily --

10 A That's -- yes. Active users and daily
11 active users, that's what I mentioned earlier.

12 Q Okay. Those were the metrics you were
13 just --

14 A Those were some of the metrics we look at.

15 Q Okay.

16 MR. MENDEL: Were the things Kik was doing,
17 the acquisition of Rounds, things that you just
18 described, were they having a positive effect on
19 revenue?

20 THE WITNESS: No. The thing was to get --
21 we were looking for a core really strong revenue model
22 with a philosophy of not collecting information. And
23 it was always a bit of a struggle in the company, like
24 Ted and Chris were very core to that philosophy. I was
25 sort of more probably the business side. And I looked

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1 were trying to measure use or sort of this -- what the
2 struggle was?

3 A Yes. There were -- there were things like
4 amount of time spent on the app, number of messages
5 sent, how many friends a person had. We found that
6 people that engaged with a friend for more than two
7 days were more likely to stay on the platform than
8 those who didn't. So building a relationship on Kik
9 was really key. So it's things like that.

10 Q And in this time period, those were
11 deteriorating? Those metrics were deteriorating?

12 A We were working a lot on the two-day
13 friends. We felt that was where strong proposition was
14 for Kik. And so there's a lot of work and effort going
15 on in that part of it. And then the other things were
16 just understanding what our users wanted.

17 And that was things like, you know, the
18 fact that, you know, video was really key. That was a
19 big component of it. So that's why -- what instigated
20 the Rounds acquisition.

21 Q Was that effort working to change the
22 metrics?

23 A The video?

24 Q The things you just discussed.

25 A Yeah. Some of the things they were doing

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1 at it like if we want to monetize, what's the
2 monetization vehicle here?

3 How do you make money if it's a large part
4 in advertising network, which relies on demographic
5 data? How do we end up monetizing? So that was a bit
6 of a struggle at that point in time.

7 MR. MENDEL: Just to make sure I
8 understand. So the acquisition of Rounds and some of
9 the other technological -- what I'll call technological
10 product development had an effect on monthly average
11 users, so it was beginning to take off?

12 THE WITNESS: The two-day friends did. I'm
13 not sure. It's really hard to correlate whether video
14 would drive in a thing. It was almost like you needed
15 to have it in order to compete because the other
16 messengers had it. If you didn't have it, you weren't
17 going to be able to compete.

18 MR. MENDEL: I see. So it may have had
19 that effect on users on how much the app was used, but
20 it did not have sort of a uncommon -- effect on
21 revenue.

22 THE WITNESS: No, it didn't. Well, we
23 didn't have any -- there was no -- at the end of '16,
24 there was no revenue to speak of. Okay? And it was
25 more that we wanted to get the user base stable and

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1 growing again than it was, like, looking for a revenue
 2 component that time.
 3 BY MR. MITCHELL:
 4 Q I'm going to try to do this really
 5 efficiently.
 6 A Sure.
 7 Q I'm going to give you what has already been
 8 marked as Exhibit 10.
 9 MR. MITCHELL: I'm going to give you guys
 10 copies of it.
 11 BY MR. MITCHELL:
 12 Q What I'm literally going to ask is -- you
 13 can take as much time as you want. I'm going to ask,
 14 do you recognize it? Kik has -- sorry, I forget.
 15 We've had some interactions just with the company in
 16 terms of documents. I forget whether it's part -- this
 17 is part of them. Can you just look at that and tell me
 18 if you recognize the document?
 19 A Yes.
 20 Q What is that?
 21 A It's our audited financial statements, year
 22 ended June 30th, 2016.
 23 Q Right. So Kik ran its financial year sort
 24 of starting July 1st, running to June 30th?
 25 A Yes.

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1 Q And did that statement fairly reflect Kik's
 2 financial results for that year?
 3 A Yes.
 4 Q Okay. I'm going to try this efficiently
 5 and just give you Exhibit 10 -- I'm sorry --
 6 Exhibit 11. While you're looking at 11, I'm just going
 7 to --
 8 MR. MITCHELL: Just for the record,
 9 Exhibit 10 is KIK_00007193 to 7229.
 10 MR. MENDEL: Can I ask a quick question,
 11 Brent?
 12 MR. MITCHELL: Yeah. Sure.
 13 MR. MENDEL: Kik does business in U.S.
 14 dollars?
 15 THE WITNESS: Yes.
 16 MR. MENDEL: Okay. So the figures in here
 17 are U.S. dollars, not Canadian?
 18 THE WITNESS: Correct.
 19 MR. MENDEL: Thank you.
 20 BY MR. MITCHELL:
 21 Q Similarly, I've just given you Exhibit 11,
 22 which is KIK_00007243 to 7279. Do you recognize that
 23 document?
 24 A Yes.
 25 Q Is that your -- is that the company's

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1 financial statements for the fiscal year ended June 30,
 2 2017?
 3 A Yes.
 4 Q And did that fairly reflect Kik's financial
 5 results for that year?
 6 A Yes.
 7 Q Okay. Did you see -- did you ever see
 8 Kik's financial statements for fiscal year 2018?
 9 A No -- well, sorry. Just saw one -- just
 10 recently the document, the 2018.
 11 Q Okay. I'm going to just give you what I'm
 12 going to mark as Exhibit 168 and see if that's what it
 13 is.
 14 (SEC Exhibit No. 168 was marked for
 15 identification.)
 16 BY MR. MITCHELL:
 17 Q Exhibit 168 is a document that on its face
 18 says, "Consolidated Financial Statements of Kik
 19 Interactive, Inc.," with the date June 30th, 2018.
 20 A Yes.
 21 Q Do you recognize this document?
 22 A Yes.
 23 Q Is this what you -- this is what you -- is
 24 this what you were thinking of a moment ago?
 25 A Yes.

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1 Q Okay. So this document, which again has a
 2 Bates number KIK_00144669 to 672, what is this
 3 document?
 4 A This is the -- I guess it's a preliminary
 5 consolidated statement of Kik that was likely prepared
 6 internally. Not by the accountants.
 7 Q Were you involved in preparing this?
 8 A No.
 9 Q Okay. So sitting here today, do you know
 10 whether this fairly and accurately reflects Kik's
 11 financials?
 12 A No, I can't.
 13 Q All right. So let me just take back those
 14 exhibits.
 15 MR. MENDEL: One quick question about 11,
 16 Brent. I'm sorry.
 17 MR. MITCHELL: Yeah. Feel free. Keep all
 18 those things.
 19 THE WITNESS: Sorry. Which one?
 20 MR. MENDEL: Exhibit 11.
 21 THE WITNESS: Yes.
 22 MR. MENDEL: On the second page, which is
 23 KIK_00007247, make sure I understand this.
 24 THE WITNESS: Yes.
 25 MR. MENDEL: For 2017, for the year ending

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1 June 30, 2017, Kik made 1.49 million US dollars in
 2 revenue?
 3 THE WITNESS: Yes.
 4 MR. MENDEL: But its expenses were
 5 32 million and some change.
 6 THE WITNESS: Yes.
 7 MR. MENDEL: Which led to a loss before
 8 other items of 29.7 million?
 9 THE WITNESS: Yes.
 10 MR. MENDEL: Okay. Thank you.
 11 That's what I had, Brent.
 12 THE WITNESS: Sorry. What did you say the
 13 loss was?
 14 MR. MENDEL: The loss before under noted
 15 items --
 16 THE WITNESS: Okay.
 17 MR. MENDEL: -- of 29.7 million.
 18 THE WITNESS: Yeah. Just clarification
 19 with the before under noted. The total loss is loss
 20 before income tax of 32 million 8.
 21 MR. MENDEL: And that's because it accounts
 22 for an income tax recovery of 16 million?
 23 THE WITNESS: No. It's -- yeah, the income
 24 tax recovery. No, then you're going down to the loss
 25 for the year being 16 million. That 32 million, that's

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1 prior to. And then you have the \$16 million tax
 2 recovery. So your net loss for the year, comprehensive
 3 loss, is 16 million at the bottom.
 4 MR. MENDEL: Okay. But for the tax
 5 recovery, it would have been 32 million?
 6 THE WITNESS: Exactly.
 7 MR. MENDEL: Thank you.
 8 BY MR. MITCHELL:
 9 **Q How did Kik's -- I'm going to go back to**
 10 **that time period. End of 2016, early 2017, how did**
 11 **Kik's financial future look at that point?**
 12 A We had about 26 or 28 million in the bank.
 13 We had a run rate of around 3 million. I don't know
 14 exactly. So we had a little over on paper anyways
 15 about ten to 11 months of a runway, which I thought was
 16 pretty good for a company of our stature where we were
 17 in the development cycle.
 18 We -- there was concerns about what the
 19 business model would be, but there were numerous
 20 options for us at the time. And my budgets in that
 21 tend to be extremely conservative. So we had another
 22 situation when we were in our A round where we were
 23 showing running out of money at the end of March.
 24 And we extended it through to October. And
 25 we had a number of options available there. So I

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1 didn't see anything different being here.
 2 **Q You use the term "runway." What does the**
 3 **term "runway" --**
 4 A Runway is how many months you have until
 5 you run out of cash.
 6 **Q The last time that Kik had raised money,**
 7 **was that from the Tencent round?**
 8 A That's correct.
 9 **Q You call that a Round D?**
 10 A Yeah.
 11 **Q All right. So how much had they invested?**
 12 A About 50 million.
 13 **Q At the time, end of 2016, early 2017, was**
 14 **Kik trying to raise additional money?**
 15 A No. We just finished the thing with Credit
 16 Suisse, so we only used them for an MA process, not for
 17 raising funding.
 18 **Q Okay. At this time period, though, was**
 19 **there a need to raise funding or change Kik's burn**
 20 **rate?**
 21 A We would -- we looked at changing the burn
 22 rate. You always do. You know, it's a constant thing
 23 from the board. Are we controlling the expenses the
 24 best we can? But there were numerous options. We had
 25 a lot of calls in for venture debt and for different

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1 types of options of funding, but -- including, like,
 2 mergers. But we weren't really interested in that at
 3 that point in time.
 4 **Q Why not?**
 5 A Because one merger potential was with a
 6 company called Tango, which was another messenger. And
 7 they approached us. They had roughly 130 million in
 8 the bank. I'm not sure if you're familiar with them.
 9 They were -- Alibaba put 250 million into them. And
 10 they had followed a business model that was really the
 11 antithesis of what we are doing, where they collected a
 12 lot of information. They, you know, continually, you
 13 know, pounded people with ads and everything else, and
 14 so they were having -- they were struggling.
 15 And so they were also -- the founders were
 16 in Tel Aviv. And so they approached Dany Fishel about
 17 doing a merger. They would -- their objective was to
 18 flatten their cap table. So they would take about 50
 19 million off doing that, and then they'd have about
 20 80 million. And the founders wanted to do something
 21 else. And they were saying like, "You guys can have
 22 the cash and the capital and merge the two companies."
 23 But we didn't -- that wasn't an option we wanted to
 24 take at the time.
 25 **Q Why not?**

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1 A Because it was -- we felt there were other
2 options available. And we didn't solve the business
3 model problem. It was getting cash, but we were still
4 in the same position.

5 MR. MENDEL: So the Kik business model --
6 or we'll call it the Kik business philosophy of
7 anonymity, and the Tango business philosophy of the
8 opposite of anonymity, sort of irreconcilable?

9 THE WITNESS: Yes. I mean, if it was -- if
10 we were in a desperate situation, we might have looked
11 at it and then cut expenses and converted the business
12 model. But it was just -- it was another big
13 undertaking we weren't prepared to take at the time.

14 BY MR. MITCHELL:

15 Q So did you do any substantive work trying
16 to raise money in this time period, end of 2016, early
17 2017?

18 A No. That's when we started talking about
19 Kin at that time. That was one of the options that Ted
20 and Fred mostly -- Ted and Fred mostly talked about, so
21 we should take a look at it.

22 Q Fred is Fred Wilson?

23 A Yes.

24 Q So how did that come up?

25 A It was in a discussion. I think -- it was

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1 A Solved the business model issues.

2 Q How?

3 A Because you created now -- you created a
4 medium of exchange where people could control their own
5 privacy. But they -- if they wanted to sell it to an
6 advertiser, they could do that. We weren't against an
7 advertiser collecting someone's information. But what
8 we didn't like was a model where you had one
9 centralized figure that collected all of that
10 information and used it in a lot of cases unbeknownst
11 to what -- you know, your approval of it.

12 So what is it? The legislation now in
13 Europe is starting to crack down on a lot of that
14 stuff, the GDPR legislation. So they're recognizing
15 the issues with it in Europe. And a lot of the
16 companies, and including ourselves, are focusing now
17 on, you know, maintaining those standards.

18 So that was a bit of a godsend for us,
19 because it sort of validated why we were concerned with
20 having a model where it collected all people's
21 information unbeknownst to them.

22 Q And how did the token or whatever it would
23 be, how did that sort of solve something?

24 A Because people could earn -- so similar to
25 what points was where we had an ecosystem where people

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1 nothing new. Ted had been researching currencies and
2 bitcoin for probably four or five years. I never
3 really at that time understood it, quite frankly, and
4 so I didn't really pay much attention to it.

5 But they -- Ted spoke about it at that
6 meeting, that we should take a look at, you know, using
7 crypto as a business model, because there is -- you
8 know, we don't have to change anything from the
9 philosophy standpoint. And it solves a lot of problems
10 we were trying to do with where we are at right now
11 where we weren't willing to collect user information
12 and sell it.

13 Q Sorry. You just said at a meeting. Did
14 you have a meeting --

15 A A board meeting. I think it was a board
16 meeting, yeah.

17 Q Okay. And was that the first time you
18 heard of --

19 A Yes.

20 Q -- a plan for this?

21 A Well, leading in, Ted had mentioned
22 something, like, casually. But most of the discussion
23 was at the board meeting with Fred.

24 Q And what did he -- he said that this solved
25 some issues?

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1 could earn currency from working with a brand or
2 filling out a survey, and then -- that sort of thing,
3 and then on top of it, selling it. The problem with
4 that was is that it was limited to a very small
5 ecosystem, right, of Kik? So it didn't have any value
6 outside of that.

7 So it's really hard to attract and get some
8 of the ability of people to really start to spend and
9 get a lot of brands really interested, because it would
10 all be within that ecosystem. And people could then
11 decide. Like if I want to sell my information to a
12 brand.

13 Like let's say a brand, as in the case
14 of -- an example would be Sony. Sony wanted people to
15 sign up for their programs or some -- and they would
16 get -- so they would have kids fill out the survey.
17 The kids would get certain amount of points. And then
18 Sony would redeem us for that application. That's how
19 that model worked.

20 Q But the idea that Mr. Livingston was
21 putting forward, how does that change that model?

22 A Because you're taking -- the people that we
23 had were taking the fact that we had brands and
24 everything else and the ability to earn and spend. And
25 we're now replacing that with a currency that has more

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1 value outside of even Kik. It's a decentralized model.
 2 So that's where he saw it. And that also
 3 competed against things like Facebook or Google where
 4 you have these large intermediaries that were grabbing
 5 that revenue. And the term I've used, I've heard a
 6 number of times, is they are the robber barons of our
 7 time, right? And I really believe that. They were
 8 taking all of this, and the user was getting nothing
 9 out of the equation.

10 Q Was there -- at any point, did Kik consider
 11 just replacing Kik Points with just dollars or --

12 A No, dollars wouldn't work.

13 Q Why not?

14 A Because dollars -- dollars are in an
 15 ecosystem that already exists out there. It's mostly
 16 in the online world. But to get into credit cards and
 17 everything else is really difficult. The other thing
 18 is, in fact, precursor to Kik Points, we also were into
 19 something -- looking at doing something called Kik
 20 cash, which was effectively a debit card that, right,
 21 kids would have, like we all had a Kik cash debit card.
 22 It was effectively a debit card that we could use
 23 online and everything else.

24 But it's just the regulation around it and
 25 everything else for using from a banking side was just

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1 for Kik or for the --

2 A For Kin.

3 Q For these points that became Kin, or these
 4 things that became Kin tokens?

5 A Yes.

6 Q They weren't called Kin tokens at the
 7 beginning?

8 A When you say at the beginning, when you're
 9 referring to the beginning --

10 Q When Mr. Livingston talked to the board, he
 11 didn't have the name Kin yet?

12 A No. No, he didn't.

13 Q Okay. How was this idea -- in this idea,
 14 how did Kik make money if brands were getting -- if
 15 brands were -- if brands were dealing directly with
 16 users, how did Kik make money?

17 A Two ways. Okay? We could be -- like we
 18 had -- we couldn't accept any of the rewards engine
 19 even off the start. We could develop apps that people
 20 would use and we would earn Kin. And then we also had
 21 a reserve of Kin that we could sell the currency at
 22 certain points in time if we wanted to do that.

23 So there's actually three different avenues
 24 for earning currency. The rewards engine we couldn't
 25 compete for, I think it was two years, if I recall.

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1 very, very complex, right? So if you take a look at
 2 it, it's almost like a progression. We tried Kik cash
 3 in the model. It's too cumbersome and the cost for
 4 transactions and everything else. We then moved to Kik
 5 Points, which was a virtual currency.

6 And then the third currency evolution was
 7 the Kin currency. So that's how we sort of looked at
 8 the progression from our end.

9 Q And how did it fix Kik's business or how
 10 did it improve Kik's business?

11 A Because now we had an ability of value
 12 exchange currency that was far more relevant than what
 13 it was in the other scenario. Because having an
 14 ecosystem of Kik, we only had -- if you take a look at
 15 it, we had 15 million MAU, which sounds like a lot,
 16 like it's a lot compared to a lot of apps. But it's
 17 not, like, to build and really broaden an ecosystem.
 18 It's not enough to get something started and to get the
 19 ecosystem going.

20 But we would have to extend other brands.
 21 We would have to get other players at the end of the
 22 day that would accept that currency in their own value
 23 exchange. Otherwise, it's just too small an ecosystem.

24 Q You mean accept the currency that they
 25 would then let people buy goods or services from them

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1 Q The two things that we talked about were
 2 the Kin Rewards Engine and the reserve; am I right?

3 A Yes.

4 Q So let me hit the rewards engine first.
 5 That would be -- at some point down the road, Kik
 6 could -- the idea was that Kik could earn part of the
 7 6 trillion Kin that were --

8 A Right.

9 Q -- dedicated to the rewards engine?

10 A That was part of it. They could also
 11 develop applications and earn Kin from people. So I
 12 could develop an app and sell stickers, my own creation
 13 of stickers, and I could earn Kin from that.

14 Q All right.

15 A And then the rewards engine is a separate
 16 piece that is built on top of that that sort of
 17 incentivizes people to build more apps on the
 18 ecosystem.

19 Q Okay. So tell me if I'm right. It sounds
 20 like there are three ways, then. One sort of -- three
 21 ways Kik could make money in this idea. One is that
 22 Kik actually just does business with people, provides
 23 them with things, and they get -- and gets paid in
 24 Kin -- in what became Kin tokens. Is that one?

25 A Yes.

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1 Q The second is that potentially Kik could
2 get some of the benefits of the Kin reward engine?
3 A Yes.
4 Q And then the third is the reserve.
5 What's --
6 A Well, the 30 percent that we still had, we
7 could do -- we could do another sale of the currency.
8 Q That's the 3 trillion Kin?
9 A Yes.
10 Q Kik retained 3 trillion of the Kin when
11 they were created; is that right?
12 A Yes.
13 Q And you said the Kin Rewards Engine. It
14 was something about two years?
15 A So we could not -- so the way the Kin
16 Rewards Engine would work, it would be based on a
17 rewards on a daily payout based on -- I think it was
18 daily, or they were going to look at changing it. But
19 the most number of transactions that were on the
20 ecosystem, whatever percentage you had of that, you
21 would get of the rewards engine.
22 So depending on how many transactions you
23 had, you would get an allocation of that rewards engine
24 on a daily basis. So it was sort of an incentivization
25 for people to build on the ecosystem.

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1 Q And sitting here today, do you remember
2 what board meeting -- what -- the date of the board
3 meeting?
4 A No.
5 Q Which is -- let me just give you -- I'll
6 give you what was previously marked as Exhibit 12B.
7 A Yeah.
8 Q This has a Bates number
9 KIK_Foundation_CAP_005705 to 5771.
10 A Uh-huh.
11 Q Can you just -- just flip through it. And
12 my first question generally is going to be: Do you
13 recognize this document?
14 A Yes.
15 Q What is it?
16 A It's the word material we had for that
17 meeting, whenever date it was. So in February
18 sometime.
19 Q So the first page --
20 A There, yeah.
21 Q Yeah. If you turn to page --
22 A It's February.
23 Q -- 57 -- sorry. Do you see the number --
24 it's very small on this document, on the bottom right.
25 A Oh, I see it. Okay. Yeah.

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1 Q Lawyers call that a Bates number.
2 A Yeah.
3 Q The thing you're looking at ends in 5707?
4 A That's correct.
5 Q Okay. So are these the board -- this is
6 the board deck for the February 1st meeting?
7 A Exactly.
8 Q And so is the first page an e-mail in which
9 Mr. Livingston sends the deck to people?
10 A Yes.
11 Q There's an e-mail address that's
12 board@kik.com. Do you know what that is?
13 A That would be all of the board members that
14 I described earlier. Do you need me to say who?
15 Q No.
16 A Okay.
17 Q That's fine. I appreciate it. Generally,
18 how were board decks in this, say, 2017 period drafted?
19 A I would have all of the financial things
20 and administrative elements, like financial reporting,
21 board approvals, that sort of thing. My team would
22 prepare it. So I had a controller, Derek and Brandon.
23 And then we had another fellow. I don't know if Neil
24 was working with us at the time.
25 But they would pull together all of the

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1 administrative elements of the board deck, including
2 the approvals. And Ted would generally write up a
3 strategic section or anything relating outside of the
4 administrative elements.
5 Q Okay. So financial -- slides on financial
6 or administrative subjects would generally come out of
7 the people who work for you?
8 A Yes. Some of the data with respect to DAU,
9 MAU, that sort of stuff, that would sometimes come from
10 our team, but mostly came from some of the data team.
11 We got a full data team.
12 Q But your team would create the slides?
13 A Yeah, we'd pull the slides together.
14 Q And Mr. Livingston would create slides on
15 other subjects?
16 A Exactly.
17 Q And then was there someone who approved the
18 deck before it was sent to the board?
19 A No. It was sort of Ted would look at it,
20 and I'd take a look at it, and that was about the
21 extent of it. And then sometimes we would -- the
22 chairman would look at it sometimes prior to going out.
23 Q So can I just -- in this document, if you
24 look, some of the slides have numbers.
25 A Uh-huh.

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1 Q You use the tiny, tiny number. There's a
 2 page 6. It actually has a Bates number that ends in
 3 5711. But there's a six, and the topic says 409A
 4 valuation?
 5 A Uh-huh.
 6 Q I don't know what 409A valuation is. What
 7 does that mean?
 8 A In the U.S. here for tax purposes, if you
 9 issue an option below the fair market value, you have
 10 consequences of your gain being treated as income at
 11 the end of the day as opposed to being a capital gain.
 12 Q Okay.
 13 A All right? So every -- it varies depending
 14 on how many things happen. Because we had just bought
 15 Rounds, and there's a lot of things that had changed in
 16 the company, you have a 409A valuation done.
 17 Q Sorry. By someone outside or someone --
 18 A Yes, it's an outside firm.
 19 Q And so, I guess, what were you telling the
 20 board here about --
 21 A So we're telling the board that the 409
 22 valuation came in at 934. And so what you do with that
 23 is you base your strike price for the options based
 24 upon that amount. We tended to go a little bit higher,
 25 so it was a bit of a cautionary cushion. So in case

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1 something happened during the period and someone caught
 2 something, we already had it in the thing.
 3 And then we've also had, you know, periods
 4 where you might move it down the other way, right?
 5 So -- but it's generally done on a, I'd say, six months
 6 basis.
 7 Q And the 409A valuation is the company's
 8 fair market valuation of the stock?
 9 A Yeah, of common stock.
 10 Q Common stock. Because the common stock
 11 doesn't trade in the price of the company?
 12 A No. No. The differentiation in values are
 13 common stock have no liquidation preferences, right?
 14 So preferred stock has a liquidation preference. It
 15 means that before you -- if we sold the company, let's
 16 say, for 200 million, all of the people that have
 17 preferred stock would get paid out first, and then the
 18 common stock holders get paid.
 19 And then there's also preferential
 20 preferreds that have another right. That gets really
 21 complicated, which I won't go in here.
 22 Q And that sounds fine, yeah. Kik had no --
 23 Kik's stock didn't trade anywhere?
 24 A No.
 25 Q Yeah. That's great. And then -- so part

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1 of these slides was -- is part of this Exhibit 12B
 2 slides that Mr. Livingston used to discuss the idea
 3 that you talked about earlier?
 4 A Yes.
 5 Q So can you show me sort of roughly where
 6 that started?
 7 A I thought it was in here. Oh, yeah,
 8 extending runway. Yeah. So under extending runway is
 9 when we started looking at our options.
 10 Q What slide number are you on?
 11 A That slide note is 005739.
 12 Q 739. So that's the --
 13 A That's the start of the section.
 14 Q Right. So above that -- right. And the
 15 page before that has a Slide 33 number?
 16 A That's right.
 17 Q I apologize. I gave myself some different
 18 numbers. So the part that starts with "extending
 19 runway" is the part where Mr. Livingston was talking
 20 about the data and the option?
 21 A Yes, about the options.
 22 MR. MENDEL: And the term "runway" is the
 23 term you talked about earlier today, meaning sort of
 24 the moment that Kik would run out of cash?
 25 THE WITNESS: Yes.

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1 BY MR. MITCHELL:
 2 Q Is the -- the section before that, there's
 3 a section that starts -- in yours, there's a tiny Bates
 4 number 5716. It says "main discussion," and then the
 5 next one, 5717, "Our metrics continue to decline." Can
 6 you look at those?
 7 A 5716?
 8 Q Yeah, or 5717, and then the slides after
 9 that.
 10 A Yes.
 11 Q Is this section sort of summarizing
 12 statistics about -- or metrics about the messaging
 13 app's performance?
 14 A Right. These are the factors we talked
 15 about MAU, DAU.
 16 Q And so were these slides about MAU, DAU,
 17 activation, and retention?
 18 A Yes.
 19 Q Were these correct when you gave them to
 20 the board or when Mr. Livingston gave them to the
 21 board?
 22 A Yes, assuming they are. I don't go and
 23 audit the data, but I assume they're correct because
 24 they come from -- these are from the data team.
 25 Q And they were given to the board of

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1 directors?

2 A Yes.

3 Q All right. And so then you were looking at

4 the part that says -- that has extending the runway.

5 A Well, you asked me where does it start, the

6 discussion about the different options. It starts in

7 that section.

8 Q Okay. So in this -- was this -- was this

9 meeting sort of your first substantive conversation

10 about the idea of doing something --

11 A Yeah. There's --

12 Q -- something with -- on the blockchain?

13 A Yes. There was some preliminary

14 discussion. Like, Ted had talked about -- as I said,

15 he had been -- looked at bitcoin and cryptocurrencies

16 for quite a while. And so I'd had some discussions

17 previously with him about it. But there was nothing --

18 or anything substantive at that point in time until

19 this meeting.

20 Q Okay. And there is a slide that has the

21 number 47. It has the Bates number that ends in 5752.

22 Is this sort of the description of that?

23 At the top it says cryptocurrency. Do you see that

24 page?

25 A Yup.

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1 Q And so --

2 MR. MENDEL: So the idea of issuing a

3 digital token was in this presentation brought up in

4 the context of extending Kik's runway?

5 THE WITNESS: Well, extending runway either

6 through -- extension of runway comes from a number of

7 different sources. Either you sell product and make

8 money or you raise funding or you do any of those

9 different things.

10 MR. MENDEL: I'm with you.

11 THE WITNESS: Yeah.

12 MR. MENDEL: I'm just trying to understand

13 how this came up in the context of the board meeting.

14 So in the broader context of the board meeting, this is

15 part of Mr. Livingston's presentation to the board

16 about how to extend -- or how to possibly extend Kik's

17 runway, this idea of a digital token?

18 THE WITNESS: Yes.

19 BY MR. MITCHELL:

20 Q Do you see under the -- there's a "Key

21 Consideration" section, do you see that?

22 A Yes.

23 Q And then under that, there's a pros column

24 and a bullet that says, "New way to raise funds that's

25 invoked." Do you see where I read that?

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1 A Yes.

2 Q Did the board discuss the cryptocurrency

3 that this was a new way to raise funds?

4 A Yes, it was a way to raise funds. And it

5 was also a value exchange system.

6 Q What do you mean a value exchange system.

7 A Well, like I mentioned earlier, they had --

8 we use Kik Points. And it didn't really work because

9 it wasn't very broad. They're decentralized. And at

10 this point in time, this is very early on in the

11 process, so I didn't really -- quite frankly, at this

12 point in time, really understand too much about

13 cryptocurrencies and what they were or what the

14 differences were between bitcoin and a blockchain or

15 any of those sort of things. It was fairly new for us.

16 Q Sure. And so what was the discussion with

17 the board members? What do you remember about the

18 board discussion?

19 A I can't really recall a lot other than

20 saying that Fred felt that it was -- we were a prime

21 candidate for something like a cryptocurrency. He

22 was -- I think it's well known in blogs and everything

23 else that he was quite a proponent of it. And him and

24 Ted had discussed it numerous times. I think USV had a

25 session five years earlier on bitcoins and

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1 cryptocurrencies that Ted attended.

2 Q Did other board members chime in with their

3 opinion?

4 A They didn't really understand much about

5 the cryptocurrency. Sam didn't, Paul didn't, myself

6 included. So we were all -- it's all something that we

7 were learning, getting an understanding about.

8 Q Okay. And was there a discussion about --

9 were there discussions sort of about -- did

10 Mr. Livingston sort of propose what Kik should do if it

11 wanted to pursue this idea?

12 A He suggested he'd like to have the

13 opportunity or approval from the board to look at it.

14 There was a lot of discussion about, you know, whether

15 do we cut big expenses to extend runway. And that was

16 something that, you know, I wasn't a big believer in

17 because, I mean, we've been -- we had, like,

18 \$26 million in the bank. It wasn't time to hit a panic

19 button or anything.

20 So there was -- that probably was a large

21 part of the discussion about expenses. And then, you

22 know, cryptocurrency was one option. There were the

23 other options of extending -- extending out the

24 discussions with Credit Suisse to take a look at other

25 players, other potential players. That was another

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1 option. I think we talked to -- what's the name of the
2 gaming company with the -- Zynga.

3 We were talking to Zynga. We approached
4 Rakuten. The girl that we worked with at Tencent that
5 did the Tencent acquisition, she just moved over to
6 chief strategy officer of Rakuten. And Rakuten was
7 very similar to us as far as the company goes. And I
8 thought it was a far better cultural fit than Tango
9 would have been. They had gaming.

10 They had -- they actually had Ebates, which
11 is like a digital coupon. So they had a messenger
12 named Viber, but they were struggling with Viber, also.
13 So Ted had met with the COO there, also. And the one
14 they brought in was more of the typical advertising.
15 So he would be going in and looking at it on the same
16 basis that we didn't want to be, which would be -- so
17 nothing ever went there.

18 So there were a number of different options
19 that were discussed. And cryptocurrency was -- at this
20 meeting was relatively new. It was -- like I said, I
21 didn't know much about it at that point in time either.

22 **Q Did the board sort of authorize also a**
23 **reopening of Credit Suisse process?**

24 **A Yes, we did. Yeah. I talked to -- Gary**
25 **Katz was a fellow at Credit Suisse we had spoken to.**

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1 **Q Did you agree with Mr. Livingston about**
2 **that?**

3 **A Not really. I was like I'd been around a**
4 **lot longer than he was, so I had been through**
5 **situations that were way more desperate than this. So**
6 **I didn't think we were in a precarious position. I**
7 **think we had to figure something out. I mean, we just**
8 **did an acquisition of Rounds. I wouldn't have proposed**
9 **that we continue on it with the acquisition of Rounds**
10 **if I felt we were in that desperate position.**

11 **So I think it was the -- the issue was,**
12 **like, figuring out, like -- like I said, we still**
13 **didn't have a monetization model. And that was**
14 **something that we really needed if we were going to be**
15 **successful at some point in time.**

16 **MR. MENDEL: Based on your observations, is**
17 **this consistent with Mr. Livingston's view of the**
18 **situation?**

19 **THE WITNESS: I can't recall right now at**
20 **the time.**

21 **BY MR. MITCHELL:**

22 **Q So what -- I'm going to take back 12B.**

23 **There was this first meeting -- there was this board**
24 **meeting where this was discussed. Sort of what -- what**
25 **happened after that, in connection to this idea of**

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1 And he felt that we should re-approach Snapchat. And
2 he said he thinks -- he thought it still made strategic
3 sense for them to take a look at us. And I forgot.
4 There was one other of the ones we approached
5 originally, but I can't recall right now.

6 **Q Did you approach Snapchat?**

7 **A He did. He knew the -- Imran I think is**
8 **the chief strategy officer at Credit Suisse. He was**
9 **chief strategy officer at Snapchat. He came from**
10 **Credit Suisse. So they all -- they had a relationship**
11 **there.**

12 **Q Let me take back exhibit -- actually, can**
13 **you look on the first page of Exhibit 12B?**

14 **A Yes.**

15 **Q Do you see at the top it says January 27th**
16 **e-mail?**

17 **A Yes.**

18 **Q This is an e-mail from Mr. Livingston to**
19 **the board?**

20 **A Yes.**

21 **Q There's just a line. The second says,**
22 **"With no bids coming out of the process, and they**
23 **continued declining on metrics, we're in a precarious**
24 **position to say the least." Do you see that?**

25 **A Yes.**

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1 **moving -- potentially investigating and moving to a**
2 **crypto idea?**

3 **A So to give you some context, at the time,**
4 **we had just finished the Rounds acquisition, so I was**
5 **heavily involved in integrating Rounds as a company.**
6 **We had just bought them. I had -- I know my controller**
7 **at the time, he had to go down for a couple of days.**
8 **He phoned back. He said he's never worked that hard in**
9 **his life. There was just a lot of work going on,**
10 **because there was a new -- it's not only the fact of we**
11 **were dealing with a regulatory structure down there in**
12 **terms of how the company had to be set up, how the**
13 **options plans for the employees worked, how we had to**
14 **change over things, what the payroll systems were.**
15 **There's a whole bunch of things like that**
16 **administratively going on, plus a lot of the**
17 **integration of personnel and people all how that all**
18 **worked.**

19 **I was heavily involved in that part of the**
20 **equation. So from there, Ted actually did a lot of**
21 **investigation with the cryptocurrency. He had**
22 **conversations with USV. I had one fellow working for**
23 **me that I believe you met, Tanner Philp, who as I**
24 **always said was the only person I knew that had studied**
25 **blockchain in school and wrote a paper on it. So he**

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1 was quite familiar with it. And he was sort of like
 2 helping out in that aspect of it. And then I think it
 3 was through Fred that we asked him, like, who would he
 4 know and who would he recommend to work with from -- as
 5 far as doing further work and getting the expertise and
 6 understanding of the industry.

7 **Q Did he recommend someone?**

8 A He recommended CoinFund.

9 **Q Okay. So at this point in early 2017, did**
 10 **Kik hire this CoinFund company?**

11 A Ted had initial meetings with them, like
 12 him and Erin and Ted I know had meetings in New York
 13 with Jake. I'm not sure who else was in that meeting.
 14 And then they had meetings on that. And then it got to
 15 a point -- and I'm not exactly sure of the timing in
 16 that sort of February, March frame. But, you know,
 17 they had given us a proposal, and it was my
 18 responsibility to negotiate a deal with them.

19 **Q Eventually, did you negotiate a deal with**
 20 **CoinFund?**

21 A Yes.

22 **Q And then Jake is Jake Brackman?**

23 A Yes.

24 **Q In the deal you negotiated, what did Kik**
 25 **hire CoinFund to do?**

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1 A Basically -- so as my -- it was early on
 2 for me, so I was gaining an understanding of what was
 3 all involved. So the large part of it, they had a team
 4 that included an economist. They had Jake. And then
 5 the legal aspects was important. And then they had an
 6 understanding of security, but not a huge understanding
 7 of security, like there was still a large technical
 8 element that was missing from their team.

9 So that's -- and Jake went through and he
 10 told me all the things that they would be involved
 11 with. I think there was some proposal that he wrote.
 12 I don't know if you have it in your files. But it sort
 13 of described what they would be doing, what they would
 14 be handling for us.

15 **Q And did -- and CoinFund worked for Kik for**
 16 **part of 2017?**

17 A Yes.

18 **Q And what did you think of the work that**
 19 **CoinFund did?**

20 A I thought they did a good job. They had a
 21 good understanding. They were both respected in the
 22 industry. I mean, Fred recommended them, so we -- he
 23 doesn't recommend people easily. And I was quite
 24 impressed by them.

25 **Q Why?**

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1 A Because they were very open and honest. I
 2 mean, we met with them. We got -- I mean, there's --
 3 sometimes just from meeting a person the first time,
 4 you can tell after. And so I was -- everybody seemed
 5 to have good credentials. And we asked them questions,
 6 they answered.

7 **Q What about after you got their work**
 8 **product? What did you think?**

9 A It was good. I thought it was good.

10 **Q Was it useful?**

11 A Yes.

12 **Q How did you use it?**

13 A We used it in a number of ways. I mean,
 14 their main mandate was to get us to a white paper. And
 15 so that was where there was a lot of process with them,
 16 understanding how that went. Then there was also a lot
 17 of work in understanding the economics on how the
 18 ecosystem would work. That, I think, was probably one
 19 of the bigger challenge areas.

20 It was how do you get a system that you've
 21 got, you know, frequency of trades and you don't end up
 22 with something like bitcoin where people, you know,
 23 just sit on their currency. That's not going to be
 24 successful. So --

25 **Q That's the economic -- sort of the post --**

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1 **after it's been offered --**

2 A Exactly.

3 **Q -- how the system works?**

4 A Yeah. But we wanted -- we needed to have
 5 that understanding up front.

6 **Q Right. Why?**

7 A Well, because we were building a business
 8 model around it. So if the business model wasn't going
 9 to work, we wouldn't be successful as a company.

10 **Q Did CoinFund -- did CoinFund also do**
 11 **research on the market at that time?**

12 A Yeah. We had no idea, like, how the market
 13 perception would be on something like this.

14 **Q What market were you concerned -- what**
 15 **market were you interested in?**

16 A Well, in terms of -- there were two folds.
 17 I mean, there were -- there was -- it wasn't at that
 18 point in time, so we wanted to understand like what
 19 would the market perception be in terms of how much
 20 money could be secured from either -- from that time
 21 mostly from the presale investors.

22 So they had done a survey that focused
 23 mostly on that sort of investor group.

24 **Q Why?**

25 A Pardon.

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1 Q Why did they do a survey?

2 A Because I didn't know whether would we --
3 would be -- is this a \$5 million element we could get
4 money for, or is it a 10 or 20 or 30, and then big --
5 how many participants would we have in it eventually.
6 But a lot of the discussion didn't evolve until
7 probably April or May. Like initially, I'd say for
8 most of March, we were just trying to figure out
9 what -- I was anyways trying to figure what this thing
10 called cryptocurrency really was.

11 Q Did that matter to you, the -- sort of the
12 size of what you could raise?

13 A It mattered more to me like how many people
14 we would have in the ecosystem and what the raise. And
15 the other big concern I had was I didn't want to have
16 something that -- you know, like a pump-and-dump type
17 scenario. We had a lot of these investors come in,
18 grab a currency, they get a hype, and then they're out
19 of it. We weren't going to survive this.

20 We had those types of people in it, and
21 that's where we raised money from. We wouldn't survive
22 as a business. It would be -- and we weren't taking
23 any money off the table for personal interest. If it
24 went sideways, I lost out a lot. So that was not our
25 objective.

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1 Q I'm going to come back and ask you more
2 about CoinFund. Was there anybody else -- did Kik hire
3 anyone else other than CoinFund for this work during
4 these periods of early 2017?

5 A Yes. We had William Mougayer. He's a --
6 well, he does a lot of the blockchain conferences, and
7 he speaks on a number of different panels. And I think
8 he's been on TV a number of times. And he knows the
9 industry quite well.

10 Q And so Kik -- what did Kik do --

11 A He's an advisor to us.

12 Q Was there a contract or a formality?

13 A Yeah. We had a -- we had an agreement, but
14 we never really formalized it until, I think, probably
15 the last five or six months.

16 Q What was the agreement before it was
17 finalized?

18 A It was -- basically, he was getting \$5,000
19 a month, I believe, U.S., was what his fee was
20 accumulating at. And then he actually agreed to become
21 one of the foundation board members.

22 Q When did the fees start accumulating?

23 A I believe it was from March 1st of 2017.

24 Q And by use of the word "accumulating," I
25 mean -- I assume you mean you didn't actually pay him,

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1 it's just an account payable buildup.

2 A Exactly.

3 Q And the 5,000 a month, did that extend
4 until he became a member of the board?

5 A It extended, I believe, until end of
6 April 2018. Because he was going to go on the board.
7 But then, when the board got sort of delayed when the
8 investigation started, everybody sort of took a breath.
9 So the foundation didn't get really formalized from
10 having independent directors until William joined in
11 March, I guess.

12 Q Until that point, the board didn't have
13 independent -- until Mr. -- I'm sorry. Can you
14 pronounce his name again? Because I think --

15 A Mougayer, M-o-u-g-a-y-a-r.

16 Q I apologize. I'm going to butcher --

17 A Mougayer.

18 Q Mougayer?

19 A Okay. I've heard it pronounced
20 differently, yes.

21 Q So until Mr. Mougayer joined the Kin
22 ecosystem foundation board, the foundation didn't have
23 any independent directors?

24 A No. But we had those two designee
25 directors. So Bill Raduchel and William. And so even

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1 though they hadn't formally joined the board, we still,
2 with respect to the foundation, ran it as though they
3 were effectively on. There wasn't a lot happening on
4 the foundation, but there were things like, you know,
5 hiring McKinsey. Okay? So McKinsey, the whole job
6 at the foundation was to further out the ecosystem and
7 build out the ecosystem. I saw the biggest challenge
8 in this space as being the economic side of it. Like
9 if you don't have proper velocity and all these
10 different things and have people spending, then you
11 have a problem with the ecosystem, right, and the
12 exchange of value, which is what it's built on.

13 And Bill Raduchel, who we've known in the
14 past, he has a Ph.D. in economics from Harvard, was
15 responsible for building some microsystems. He was on
16 a number of major boards. They always joke. There was
17 one meeting he was late for 45 minutes, and he said
18 Bernacki took more of his time. So he does have a lot
19 of advisory work economically. And he -- I really
20 respect his opinion.

21 And he's -- and he was -- so we dealt with
22 him as though he was an individual or an independent
23 board member. And the same with William. And there
24 was a lot of times we didn't reach like -- William was
25 against hiring McKinsey. Bill was for it because he

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1 felt we really needed it. William said all of these
2 ecosystems just evolved.

3 And Bill didn't feel that was the right
4 way. So that was an example where we used the
5 foundation, even though they weren't designated yet, we
6 still use them as a consult.

7 MR. MITCHELL: Take a break now. So we're
8 going to go off the record.

9 THE VIDEOGRAPHER: This ends Disc Number 1.
10 We're going off the record. The time on the video
11 monitor is 11:29 a.m.

12 (A brief recess was taken.)

13 THE VIDEOGRAPHER: This begins Disc
14 Number 2. We are back on the record. The time is now
15 11:45 a.m.

16 BY MR. MITCHELL:

17 Q During the break, did you have any
18 substantive conversations about the case with the
19 staff?

20 A No, I didn't.

21 Q Earlier, before the break, we had talked
22 about a company called CoinFund. Did Kik hire other
23 companies or other people to help with the idea of --
24 the idea or the potential offering of the Kin tokens?

25 A William Mougayar.

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1 You'll see Wix.com. They were a very large
2 company that does a lot of platform and web-based work
3 for companies. And he was head of product for their
4 mobile group. Really, really smart individual.

5 Q And then was doing Cointree at the time?

6 A No. He was a founder of Cointree, but his
7 main job was with Wix. He had graduated top of the
8 school from the main university down there, which is
9 quite well respected. And then the second person at
10 Cointree that was really critical was Lionet Beaver.
11 So Lionet was a security specialist.

12 So he would work in one of the top
13 divisions at the Israeli defense forces in cryptography
14 and that sort of thing. And he was really, really
15 tough on security. So I was explaining the other day
16 that he wouldn't sit at a window with his computer,
17 because he had an experience where somebody used a
18 high-power telescope and -- the story where they kicked
19 off on people's screen.

20 So he was really, you know, appropriately
21 tough on security. So he handled all of our security
22 stuff.

23 Q Did Kik also hire a company called
24 Wachsman, W-a-c-h-s-m-a-n? Does that ring a bell to
25 you?

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1 Q Right.

2 A And then we also hired eventually Cointree.

3 Q What's Cointree?

4 A Cointree is a consulting firm, also.
5 They're in Israel, Tel Aviv. They were Daniel -- Dany
6 Fishel, who was our CEO or president of Rounds in
7 Israel, he knew two of the people there. What was
8 interesting about them is they had previously done a
9 token also in the messaging space. So we were quite
10 intrigued about their background and expertise in that
11 area. So we hired them, also.

12 Q What was their scope? What were they
13 trying to do?

14 A Their scope was more technical and actual
15 product in nature.

16 Q Compared to CoinFund?

17 A Yes.

18 Q What did you think of their work?

19 A Good. So the two really interesting
20 people, one was Tal -- I can't remember his last name
21 right now, but Tal was the -- at the time was the -- I
22 think he was head of product at Wix. I don't know if
23 you're familiar with Wix. They're a really large
24 international -- you'll see them on the -- they're
25 advertised at the back of the baseball diamond.

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1 A Not offhand. The technicals --

2 Q The PR group?

3 A Oh, sorry. Rod might have -- yeah, he
4 might have used Wachsman.

5 Q Did you have any dealings with them?

6 A I had no dealings with them.

7 Q So after that February 1st meeting, I guess
8 sort of what -- did the management get instructions or
9 approvals from the board to do something?

10 A I think they got approvals to go take a
11 look at it, and then come back and report on the
12 different options that were there, not just crypto.
13 Like, you know, so what would it take, like, if we
14 reduced the work force -- excuse me -- what could we
15 reduce it down to.

16 Q Okay. And what -- sorry. What was your
17 role in that?

18 A My role at the time, as I said, I was still
19 heavily involved with Rounds and the integration there.
20 And we did do a lot of the financial forecasting in
21 that with our team and taking a look at the different
22 scenarios, if we reduced, you know, labor and what
23 could we get it down to. So as an example, we spoke
24 earlier about co-ops.

25 Like we -- that was fairly easy because we

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1 didn't have to cut anybody. We just reduced the number
2 of co-ops that were coming in the next term.

3 Q Did you have Mr. Philp work on the --

4 A Yeah. Tanner probably worked on Phillips.

5 Q What did he work on? That's fine. What
6 did he work -- that's fine.

7 In terms of this plan, the idea of a new
8 crypto idea, was Mr. -- sorry -- was Mr. Philp involved
9 in that?

10 A Yes.

11 Q What was his role?

12 A His role actually initially was more
13 related to looking at the concerns around a currency.
14 So as an example, like AML was a major concern for us.
15 We had done some preliminary work when we looked at Kik
16 cash, and understanding what KYC was, and were we
17 required to have MTL licensing, all those sort of
18 elements. That was a big part of his undertaking at
19 that time.

20 Q Anything else?

21 A And then, once CoinFund got going, he was
22 involved with the CoinFund. But that wasn't until
23 later. That was, like, April, May.

24 Q In this period, right at the beginning of
25 February, was there a securities law issue that came to

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1 different ingredients to proceed with it. And Ted
2 agreed more. And then Tanner got involved in looking
3 at this from a, you know, frame, or how do we go about
4 it.

5 Q Sure. So on the middle of the first page,
6 do you see that part that -- in the middle of the first
7 page down onto the second page, is that an e-mail from
8 Mr. Estill to Mr. Livingston?

9 A Yes.

10 Q Okay. And then above that, did
11 Mr. Livingston then forward that to you?

12 A Yes.

13 Q Do you see in his e-mail to you he
14 describes -- told the YPO group?

15 A Yes.

16 Q Do you know -- what is YPO?

17 A It's Young Presidents Organization.

18 Q What is that?

19 A Well, my brother is one, also. They're all
20 young presidents, and like they either can -- there's
21 criteria for getting in. You have to have a company
22 over certain level and you're at a certain age bracket.
23 And they're organizations that basically can talk
24 openly about -- they talk about business. They talk
25 about personal issues. They talk about all sorts of

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1 your mind?

2 A We looked at it mostly as a currency. And
3 there was some securities law aspects of it. I mean,
4 that was probably my first time hearing something about
5 a Howey test back in March or April, but there wasn't a
6 lot of discussion about it at that time.

7 Q Okay. Let me just give you what I've
8 marked as Exhibit 169.

9 (SEC Exhibit No. 169 was marked for
10 identification.)

11 BY MR. MITCHELL:

12 Q It should be double-sided. It's one sheet
13 of paper, but two pages. KIK_00021266 and 67.

14 A Uh-huh.

15 Q 169. Again, my first question is going to
16 be, take the time you need, but then do you recognize
17 this document?

18 A Yes.

19 Q What is it?

20 A It was one of our board members. Just give
21 me a second here. I think it was -- Ted wrote, I
22 guess, to Jim as a thanks to all the board members.
23 And Jim had a response afterwards, which he agreed with
24 it while it was -- so what -- really ahead of the
25 curve. But he said that we felt we had all the

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1 things. So it's a fairly global organization.

2 Q Do you know who Mr. -- when Mr. Livingston
3 said he told the YPO group, do you have any idea like
4 what --

5 A I don't know who's in his YPO group.

6 Q There are multiple --

7 A You know, there's -- every --

8 Q Got it.

9 A Every area has a chapter, they call them.

10 Q Got it.

11 A And there is, like, a forum of let's say

12 ten people in that forum.

13 Q Got it. This is not -- based on your
14 understanding today, this is not him telling about a
15 global group about this?

16 A No, no. No.

17 Q Okay. Got it. The e-mail -- then is the
18 e-mail at the top -- at the top of this is an e-mail
19 from you back to Mr. Livingston?

20 A Yeah.

21 Q And so the first paragraph says, "I agree
22 why I am having Tanner make up the slides, that if you
23 looked at this as an investment - we'll provide the
24 frame work."

25 A Yeah.

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1 Q Do you see where I read that?

2 A Yes.

3 Q What did you mean?

4 A That if people, like, were going to be

5 investors in this -- I mean, it wasn't at this point in

6 time. We didn't have the differentiation between

7 presale investors and then participants. We had

8 different nomenclature. So one of the things that was,

9 if we looked at this, what do we think -- what were the

10 capabilities, like how big would this be in terms of

11 the amount of funds.

12 Q At this time, what were you -- what was the

13 group of people you were trying to understand?

14 A The group of people we're trying to

15 understand were probably those people that were into

16 crypto initially.

17 Q I guess I'm trying to understand, you were

18 distinguishing between presale and something else?

19 A Yes, presale and public sale.

20 Q Okay. In this idea, this time, when you

21 were thinking about it --

22 A We would --

23 Q -- were you thinking about people who would

24 fall in both of those sets?

25 A I can't really recall. I don't think we

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1 had that ability to distinguish at that point in time.

2 Q Okay. And then, at some point, you said

3 that there was a nomenclature. What do you mean?

4 A The nomenclature about, like, there were

5 all these terms flying around, like we were using

6 users. We were using participants. We were using

7 investors. We were using -- there were terms like

8 crypto investors. There were terms like ICO. There

9 were TDE. There were all of these different terms.

10 This was so early on. We had no set terms established

11 in terms of what was what.

12 Q Did you eventually?

13 A Eventually, yes.

14 Q How did you do that?

15 A I think it was in the white paper,

16 actually. It gets -- ends up getting defined where we

17 talk about participants in the ecosystem. And it's

18 made up of about three or four groups. So that could

19 be -- you need all of them in the ecosystem to really

20 survive properly. I believe they called them the

21 capitalists. They called them the users of the system,

22 those people that would be earning day in and day out.

23 Brands and advertisers that would be bringing, like,

24 injection of funds into the economy.

25 Those were sort of the three or four main

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1 groups that we looked at at that time.

2 Q How did you come up with the -- how did

3 that nomenclature develop?

4 A I don't -- to be quite frank, it's probably

5 just through discussion with everybody. I can't recall

6 one particular person saying this is what we should do.

7 It was likely a marketing thing from marketing team,

8 they would do it, but I can't recall at the time.

9 Probably in conjunction with CoinFund.

10 Q Then there's a second line to your e-mail

11 that says, "There are nuances here that you have to

12 consider also from a securities law standpoint."

13 A Yes. There was -- as I said earlier, there

14 was some securities concerns, but there are also -- as

15 we got into it, we looked at it more from a currency

16 standpoint.

17 Q What do you mean?

18 A We looked at --

19 MR. CADIGAN: I'm going to caution you not

20 to get into attorney-client communication.

21 THE WITNESS: Oh, right. I'm sorry.

22 BY MR. MITCHELL:

23 Q Yeah. So if I ask you a question and you

24 can picture in your head what you're going to say, what

25 you're going to say is something like the lawyers said

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1 that --

2 A Yeah.

3 Q -- just stop and let Brett know.

4 A Okay. Okay.

5 Q We don't want to -- we can work this out.

6 A Got it.

7 Q It's not --

8 A Got it.

9 Q It's everyday work for us. But just let

10 him know before you say that right up.

11 A Okay.

12 Q So I guess what did you -- my question is:

13 What did you mean here?

14 A What did I mean --

15 Q What did you mean? When you wrote the

16 e-mail, what did you mean that there were nuances here

17 that you have to consider?

18 A There's a lot of different aspects to this

19 that we had to consider.

20 Q Okay. Earlier -- so at this point in time

21 in February of 2017, you felt that there was a

22 securities law issue to consider?

23 A I think we had to understand it and take a

24 look at it. So the big thing that it was -- that was

25 not as much of a concern to me at the time. Or I don't

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1 know timing-wise here. It's sort of hard to remember
2 what happened when. But for me, one of the big things
3 I had been reading a lot about, about bitcoin as an
4 example, was a fact that it was being used for a lot of
5 illicit type actions and opportunities.

6 And that was one of my biggest concerns.
7 And so that's when we had previously already done a lot
8 of work in currencies with respect to Kik cash that I
9 had somewhat of an understanding of MTL. So those were
10 some of the main nuances I was concerned about at the
11 time, and then securities law was another one.

12 Q Okay. I guess what -- this e-mail that's
13 Exhibit 169 is a couple of days after that board
14 meeting. What happened? What did -- let me take that
15 back so we don't lose it. What happened -- what
16 happened next? What did people do to move this -- or
17 did people do something to move this along?

18 A Yes.

19 Q What did they do?

20 A My understanding is Ted engaged or talked
21 to Fred. And I'm not sure when exactly CoinFund's name
22 came up. That was one of them. Again, I would have
23 talked to counsel, which is privileged.

24 Q Okay.

25 A And that was -- in that period of time,

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1 that was probably it for me, if I recall, because I
2 was -- again, we were still heavily involved with all
3 of the things surrounding the acquisition of Rounds.

4 Q Was there another board -- was there a
5 subsequent board meeting?

6 A Yes, there was.

7 Q And what I'll do is -- let me just give you
8 this in case it helps your recollection. I'm going to
9 give you what's already been marked as Exhibit 14A.
10 It's -- on its first page, it has a -- on its face,
11 it's a February 16th e-mail from Ted Livingston to
12 board@Kik. Then it has Bates numbers KIK_00026450 to
13 494.

14 A Yeah.

15 Q So do you recognize this?

16 A Yes.

17 Q What is it?

18 A It was a board deck that we were presenting
19 as follow-up to the last meeting. We just said, I
20 believe, in the last meeting, in the minutes, that we
21 would be coming back to them with more update of some
22 of the things we discussed in the last board meeting.

23 Q Okay. So then sort of put 14 out just so
24 you can have a look at it if it's helpful. What
25 happened at this? What was the presentation to the

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1 board? What were people presented?

2 A Well, they wanted a process update on
3 Credit Suisse, which was more my involvement. So we
4 take a look at the process update. We had been talking
5 to Zynga. So Zynga was still quite interested, I
6 agree. And then Rakuten, which were the things I
7 alluded to earlier. Do I need to repeat those or --

8 Q No. No, I hear you.

9 A Okay. And then we also had -- someone had
10 suggested a group called Chinese Renaissance, which is
11 in China, that had approached us. And they wanted to
12 take a look at some possibilities over in China. And
13 then, as I said earlier, Tango had made an initial
14 report to Danny talking about possibly merging.

15 Q And you're looking at a page right now that
16 has at the bottom 454, the bottom right-hand corner?

17 A Yes.

18 Q Okay. And then, if you turn to the next
19 page, there's a slide that says Kik and the blockchain?

20 A Yes.

21 Q So was there discussion in the meeting
22 beyond the Credit Suisse report?

23 A Yes.

24 Q What was -- was there discussion about Kik
25 and the blockchain?

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1 A Yes.

2 Q What was that discussion?

3 A Well, basically, Ted and Erin, I think,
4 worked on discussing and taking a look at it. And they
5 presented this document to the board as to what -- to
6 give them a little bit more discussion parameters
7 around the blockchain and what was there.

8 Q What was their presentation? What was --
9 what did they -- what did they tell the board?

10 A Well, they felt there was a good
11 opportunity for Kik to, you know, institute a
12 blockchain, you know, on the -- on our ecosystem. So
13 the big issue, as she identifies here, is mainstream
14 user adoption.

15 Q I'm sorry. What page? Just give me the
16 Bates.

17 A I'm sorry.

18 Q Either the slide number or the Bates
19 number.

20 A 6459.

21 Q 6459. Okay. Great.

22 A So the amount of daily active users. And
23 the user main -- the user adoption is still missing.
24 So that was where they felt, I think, the opportunity
25 for Kik was.

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1 Q And the idea was that mainstream users
2 hadn't adopted a crypto product yet?

3 A No. No. It was very complicated as a
4 product from a user standpoint. And so that's where we
5 had an opportunity, we felt, to be one of the first
6 consumer platforms to actually adopt the user
7 cryptocurrency.

8 Q Right. And that's on the slide that ends
9 in 461?

10 A Yes.

11 Q Do you see the language at the bottom, it
12 says, "We believe that the scale of our network alone
13 will drive strong interest from the crypto investor
14 community"?

15 A Yes.

16 Q Was there discussion about that?

17 A I believe so, yeah. We would have
18 discussed it.

19 Q So what is the -- what's the importance of
20 scale of the network?

21 A Because of the size, the number of people
22 we had, we had 15 million monthly active users, which
23 was really large relevant to any other cryptocurrency
24 that currently existed.

25 Q Okay. And the discussion was about that

Page 108

1 this type of an environment.

2 So I believe they talked about a messenger.

3 But I can't recall if they talked about a messenger,
4 number of users, all that sort of thing.

5 Q Okay. And the -- looking back on the page
6 that's the -- that ends in 461?

7 A Yes.

8 Q Do you see where it says a Kik token built
9 off the existing blockchain?

10 A Yes.

11 Q Is that the product that you're talking
12 about?

13 A Yes.

14 Q And so CoinFund did work to understand what
15 the market was for that product?

16 A Yes.

17 Q And if you flip to the page that ends in
18 463, do you see there's a page that has, "Crowd funders
19 have strong appetites for exploration"?

20 A Yes.

21 Q Is this also -- is this drawn from the work
22 that CoinFund did?

23 A Yeah. It even says so on the bottom,
24 CoinFund investor survey.

25 Q Oh, okay. Sorry.

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1 that would drive strong interest from the crypto
2 investor community?

3 A Yeah. So I don't -- at the time, I don't
4 know what they meant by crypto investor. As I said,
5 the nomenclature sort of got involved as we moved
6 forward. But I believe when they did this test, they
7 specifically focused on people that had already been
8 investing into cryptocurrencies as opposed to anybody
9 broader than that.

10 Q Who did that?

11 A I believe it was done by CoinFund.

12 Q Why did they do that?

13 A To evaluate whether -- if you take a look
14 at whether this -- what the people thought about our
15 network and our user base and -- but I don't think they
16 did it -- they did it just on an anonymous basis. I
17 don't think they used our name or anything. They
18 wanted to just get independent thought about what they
19 felt the acceptance was.

20 Q Why?

21 A Well, to see whether -- just like as a
22 product sale, you do market research. This was a
23 product. But the product is -- nobody didn't
24 understand it, so they wanted to try and see what the
25 reception would be for applying a cryptocurrency in

Page 109

1 A It's okay.

2 Q That is not something I've noticed before.
3 Yeah. Okay. So this is drawn. And did the board
4 discuss -- so the board got this presentation. What
5 did the board do?

6 A Well, the board wanted to understand if
7 there was an appetite and if this was something -- this
8 was very preliminary. And it was, like, two weeks from
9 when we made the initial presentation. This was dated
10 when? February 16th. And the last board meeting was
11 February 1st. So it was, like, literally two weeks
12 after we had the first introduction from the board
13 meeting of cryptocurrencies.

14 Q Okay. Well, how -- when you say it was
15 preliminary, what do you mean?

16 A Well, because in two weeks, you can't --
17 there was further work, a lot further work. This is
18 just a preliminary understanding as to whether this was
19 something that there would be an interest level in and
20 what the impact would be.

21 Q Was the management then proposing at this
22 point that Kik consider a sale within weeks?

23 A No.

24 Q Was it proposing that Kik have a draft
25 white paper within weeks?

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1 A No. I don't -- I didn't get that feeling
2 at that time at all. As I said, a lot of people
3 didn't -- I still didn't have a full understanding of
4 what it was at that time.

5 Q Can you flip to the page that's 471, ends
6 in 471. I'm sorry. And then if you can flip back one
7 page. Do you see the -- flip back one page. Look at
8 the page that ends with 470. Do you see it says "next
9 steps"?

10 A Yeah.

11 Q And then 471 says, "Three weeks to gauge
12 preliminary investor interest"?

13 A Uh-huh.

14 Q Do you see that?

15 A Uh-huh. Yes. I'm sorry.

16 Q So was management proposing that the
17 company take three weeks to gauge preliminary investor
18 interest?

19 A I guess so. That's what this is showing.

20 Q All right. Is this a timeline with
21 two weeks, one week, one week, and two weeks?

22 A It was a proposed timeline.

23 Q Would there be a first draft of a white
24 paper in six weeks?

25 A Yes.

Page 111

1 Q Okay. So what was -- was there a consensus
2 or a decision out of this meeting that you remember?

3 A I think, yeah, it was -- I think the
4 board -- do you have -- I don't know if you have the
5 minutes, but it would state in the minutes. But I --
6 from what I recall, I would say it was to move ahead.

7 Q I apologize. If you need the minutes, you
8 can ask me. I don't actually have a lot of the minutes
9 physically in the room, but I can get them for you.

10 A Yeah. But that was, yes, to go ahead.
11 Now, there was -- I think everyone agreed except for
12 Paul Holland. But Paul Holland's dissension was
13 relating as much to an understanding you're not a
14 currency. His dissension was relating more to -- and
15 I'm not sure if it was in this board meeting.

16 At that time, it was to -- he wanted -- he
17 was of the mind that we should cut employees down to,
18 like, 50, 60 employees and move forward on that basis
19 and just extend the runway for a year and a half, two
20 years, which was an option.

21 Q It's just not an option that the rest of
22 the board wanted to pick?

23 A No. No.

24 Q Okay. So I guess out of this meeting, did
25 management go off and try to sort of continue the

Page 112

1 planning effort?

2 A Yes.

3 Q And so how -- at this point, what did you
4 think of this idea?

5 A I was -- I thought the idea made sense. It
6 satisfied all of the things that we were looking for.
7 The marketing team seemed quite, you know, interested
8 and supportive of that, but everybody was still
9 learning a lot at that time. And I think -- so at this
10 point in time, we're now still in mid-February. It's
11 still really early on. And as I alluded earlier, I'm
12 still heavily involved with Rounds and what was going
13 on at Rounds.

14 Q So did Kik -- what were the steps that got
15 taken on this part of Kik's business in trying to
16 evaluate this idea?

17 A Well, I would assume -- I can't recall, but
18 I would assume Erin went out and she started to do the
19 research, was my understanding.

20 Q Sorry. What are you pointing to?

21 A So it talks about user research.

22 Q Got it.

23 A And it talks about brand development
24 exploration. That would have been the marketing group.

25 Q Do you know whether anyone from the

Page 113

1 marketing group did those things?

2 A I think they had discussions. I don't -- I
3 can't recall the results of what it showed at the time.

4 Q Did CoinFund -- did Kik continue to work
5 with CoinFund?

6 A Uh-huh.

7 MR. DEJARNETTE: Is that a yes?

8 THE WITNESS: Sorry. Yes.

9 BY MR. MITCHELL:

10 Q Yeah. Sorry. I apologize.

11 A Yes. Yes.

12 Q I asked the question as you were picking up
13 that coffee.

14 A Yeah. Yes, I did.

15 Q Okay. What did -- what worked at CoinFund?

16 A They worked on, like, the economic models,
17 like transactions and things like that. That was
18 Alex -- I forget his last name. It was a Russian last
19 name. He was the person that did all of the economics
20 side of it. And then we looked at different
21 structures, what was involved in the white paper, what
22 you had to put in part of it. So a lot of it was
23 gathering the information, then, you know, structures
24 of the model.

25 And in terms of, like, when we went to sell

Page 114

1 the product, like what did he need to have in place,
2 like how should that be structured. And then, I guess,
3 as it relates to study to preliminary valuation, which
4 I guess he was already doing, or that report you showed
5 me earlier.

6 Q Sorry. The preliminary what?

7 A Preliminary validation.

8 Q And what was that?

9 A I guess that was the study that you just
10 showed me earlier. But that's why I'm a little bit
11 confused, because I'm not sure where -- you showed me
12 some -- did you show it to me earlier?

13 Q I think there's some CoinFund information
14 in that slide that I didn't notice had a CoinFund
15 source on the bottom.

16 A Right. And that's why I -- that's why I'm
17 saying I'm a little confused between the two.

18 Q Let me -- let me make you less confused.
19 CoinFund -- I'm sorry. At some point after this
20 meeting, did -- I'm sorry. Let me start over.

21 At some point, did CoinFund give Kik, like,
22 a written report or a written document with information
23 in it?

24 A I think so. I'm assuming -- well, it says
25 here source of investor survey. But I can't recall the

Page 116

1 Q Okay. I'm sorry. What?

2 A On the table of contents.

3 Q Got it. I apologize. This has a Bates

4 number of CoinFund 007691 to 7747. What page are you
5 looking at?

6 A I'm just in the table of contents two.

7 Q Got it.

8 A It's midsection there.

9 Q Did you review this document?

10 A I must have read it at the time, yes.

11 Q What did you think of their report?

12 A Seemed to make sense based on what I looked
13 at here. For me, specifically, it gave me a little bit
14 more understanding of what was involved and how market
15 was looked at.

16 Q What do you mean the market was looked at?

17 A Well, this is -- this was like in looking
18 at from the -- how the market from what we eventually
19 called presale investors would look at this type of a
20 project.

21 Q What were presale investors?

22 A Presale --

23 Q What did you eventually -- sorry.

24 Eventually, you developed the term "presale investors"?

25 A Yes.

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1 actual report. I recall the slides or they were
2 presented in the slides, but I don't recall seeing a
3 full report.

4 Q Okay. Let me just --

5 A There must have been one.

6 Q I'm going to give you what was -- let me
7 trade you. I'll take the --

8 A Oh, this one. Okay. Sorry.

9 Q No, it's fine. I'm going to give you
10 what's been marked as Exhibit 39.

11 A Yeah.

12 Q Which on its face says CoinFund Token
13 Integration Research and Proposed Economics.

14 A Yes.

15 Q Has a date of March 21st.

16 A Yes.

17 Q Is that the report you were thinking of?

18 A Yes.

19 Q So is this a deliverable that CoinFund sent
20 to Kik?

21 A Yes.

22 Q And does this include CoinFund's report on
23 the market for selling the product?

24 A Yes. It says "CoinFund crypto investor
25 survey."

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1 Q And once you developed it, what did that
2 term mean?

3 A Presale investor meant sophisticated
4 investors that would be supportive of the project and
5 that would provide funding in order for us to develop
6 out the ecosystem and build the product.

7 Q And were -- when you were talking about
8 these presale investors, were those people who were
9 accredited investors?

10 A Yes. And we went through an entire process
11 with Cooley.

12 Q I'm sorry. When you actually did the sale,
13 you --

14 MR. MENDEL: Is that correct?

15 THE WITNESS: Pardon.

16 MR. MENDEL: Is that correct?

17 THE WITNESS: Yes.

18 MR. SCHLEGELMILCH: You nodded.

19 THE WITNESS: Yes, when we did the sale.

20 MR. MENDEL: Thank you.

21 BY MR. MITCHELL:

22 Q So did you -- did Kik tell CoinFund to
23 limit its analysis to accredited investors?

24 A I don't recall. I wasn't involved at that
25 point.

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1 Q Any reason to think they did that?

2 A Well, I don't think they -- that's who
3 they -- that's who they would be aware of, is in the
4 space. That's what I would assume they would go to.

5 Q Why would you -- you would assume that they
6 only know accredited investors?

7 A Oh, sorry. No, I don't think that was the
8 case. I don't know -- I don't think they just went to
9 accredited investors in this thing. What I said was we
10 only did sales to accredited investors.

11 Q When this research that's in Exhibit 39 was
12 done, what type of people were -- would be sort of
13 being accessed to get this information?

14 MR. CADIGAN: Take your time to review the
15 document.

16 THE WITNESS: Yeah. I have to take a look
17 at it, because I don't recall.

18 BY MR. MITCHELL:

19 Q Oh, I can -- that sounds great. I totally
20 understand you don't recall. I'll take you to the page
21 that ends in 7709. There's a -- sorry. Page 19.
22 Yeah.

23 A Yeah.

24 Q Do you see that there's a line, "Working
25 together with the Kik team, CoinFund conducted a public

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1 Q CoinFund, when you -- CoinFund, they -- did
2 they -- sorry. When you say user base, what do you
3 mean?

4 A Our user base, the 15 million MAU.

5 Q Okay. So did CoinFund survey Kik's user
6 base?

7 A I can't. I would assume not because it
8 says here in the research, open survey in the
9 blockchain research and investment community, targeting
10 knowledgeable and experienced in issues surrounding
11 blockchain-based decentralized crowd funding.

12 Q Did Kik ask CoinFund to survey the Kik --

13 A I have no idea.

14 Q Did it ask CoinFund to survey the Kik app
15 user base?

16 A I'm not -- I don't think so at this point
17 in time.

18 Q Did they do -- did they do it at any point
19 in time?

20 A I believe if you go back to the document
21 you showed me earlier --

22 Q Sure.

23 A -- it was in that statement that said
24 that -- where Kik was responsible for --

25 Q I'm going to give you back 15A.

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1 and open source survey in the blockchain research and
2 investment community, targeting the set of people who
3 are knowledgeable and experienced in the issues
4 surrounding blockchain-based decentralized crowd
5 funding and known as crypto investors"? Do you see
6 that?

7 A Yes.

8 Q Is that who Kik -- is that who CoinFund
9 reached out to?

10 A I guess that's who they would have reached
11 out to. That's a small sample size for what we were
12 looking at eventually, is it's only -- and this is
13 where -- we were in this sort of in-between point of
14 you've got crypto as an early stage product. So it's
15 very early in the stage, no different than when the
16 Internet started, who understood the Internet. So they
17 went from that level. And then -- but it wasn't until
18 they would -- at the later stages, would start to -- I
19 would assume would start to talk to our user base,
20 right?

21 Because our user base, probably in the
22 initial stages, would not have been fully aware, as is
23 back in March, right, of what cryptocurrencies are and
24 that sort of thing. That's where they started the
25 community channels and things.

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1 A Yeah.

2 Q Is that what you were talking about?

3 A Was it this one or --

4 Q Were you looking for that page, that bunch
5 of --

6 A Yeah. The weeks, yeah.

7 Q Yeah.

8 A And then it said what was CoinFund
9 responsible for and what was Kik responsible for. Do
10 you recall that we set the number of weeks?

11 Q I apologize. I just gave you the -- I gave
12 you 15A. I think I have given you 14A. They're very
13 similar.

14 MR. MENDEL: 14A is the one you want. It's
15 going to be on page 21.

16 BY MR. MITCHELL:

17 Q I apologize. Here is 14A. 58 for the
18 record is KIK_00026495 to 26540. We'll just take 15A
19 back. I grabbed the thing that was in front of me.

20 A Okay. Do you want -- you want me to look
21 at 14A.

22 Q I think you were looking at 14A. My
23 question was: Did CoinFund survey the Kik app users
24 about their appetite for purchasing a token from Kik?

25 A What I saw here was it says Kik user

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1 research. And it's got Kik next to it, understand fit
2 with users, earn redeemed, understand amongst key
3 stakeholders, brands and brand developers. So based on
4 that, my assumption is that Kik, we did do a survey.
5 But as I said, I wasn't, like, directly involved in the
6 marketing stuff.

7 I was heavily involved with Rounds still,
8 and then also looking at the whole process of
9 understanding all of the currency implications at the
10 time.

11 Q Other than that piece of paper that you're
12 pointing to, do you have any reason to think that
13 anybody --

14 A No. I would think they did do the survey.
15 They would have talked to --

16 Q Okay. You think they did?

17 A Yes.

18 Q Did anybody talk to you about it?

19 A They probably sent me an e-mail at the
20 time, but I can't really recall.

21 Q Okay. Did the board discuss it?

22 A I can't recall at the board level.

23 Q What did Kik learn from this survey of the
24 Kik app users?

25 A What did Kik learn? I think there was,

Page 124

1 A No.

2 Q Do you remember thinking that any of it was
3 unreliable?

4 A Not necessarily, no.

5 Q What do you mean not necessarily? Just
6 focus on the necessarily part.

7 A I honestly can't remember the details of
8 this survey at the time.

9 Q But in terms of your -- sort of your
10 reaction to it, do you remember thinking that any of it
11 seemed unreliable?

12 A No, I didn't think any of it seemed
13 unreliable. I will say on an overall context, the
14 philosophy of Kik, especially with Ted, was we didn't
15 really do a lot of surveys. And the rationale for that
16 was is that he very much followed, you know, what
17 Steven Jobs would say, that you can't ask people
18 surveys on questions they don't have yet and don't
19 understand.

20 And that's how he went about things. There
21 were a lot of things that we did on the product side
22 that we did absolutely no research on. And we
23 delivered it and it did very, very well. And people
24 would take a look at it and say, "Well, why would that
25 work?"

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1 like -- we would gauge -- I can't recall exactly in the
2 survey because I don't have the survey results. But
3 because we had a fairly strong interest within the Kik
4 Points economy, the correlation there was that we would
5 have a strong interest in the cryptocurrency.

6 Q I'm sorry. Is that based on just the
7 existence of Kik Points or based on some survey of the
8 app users?

9 A I can't recall what it said on the survey
10 of the app result users. I know as a premise overall,
11 that's the premise that I went on. But I don't recall
12 directly in terms of the Kik survey what it showed at
13 that time.

14 Q Okay. So coin -- so Exhibit 39 is
15 March 21st CoinFund report.

16 A Yes.

17 Q Do you know what -- sorry. I believe you
18 said -- am I right that you said you reviewed this when
19 it came in?

20 A Yeah, I reviewed it. What do I recall from
21 it?

22 Q Do you remember thinking that anything in
23 it was wrong?

24 A At the time?

25 Q Yeah.

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1 So we looked at we did a lot of these
2 things because we had now more of a marketing group,
3 but I still think there was some of that philosophy
4 internally amongst some of the leaders that, okay, we
5 can do the survey in support of certain things.

6 But until people actually saw it and used
7 it, it was really hard for them to distinguish whether
8 it was something that would go with the product or not.

9 Q Okay. The report that -- this Exhibit 39,
10 can you just turn to page seven of it? There's a line
11 that says notable token sales. And if you flip through
12 the next couple of pages, there seems to be
13 discussion -- there seems to be discussion of notable
14 token sales.

15 A Yes.

16 Q I guess my question is sort of: Do you
17 have an understanding of why -- why was this in the
18 report? What was the importance of understanding other
19 token sales?

20 A The importance of understanding other token
21 sales is, I guess, you know, what the size of the
22 market was really like and would there be an appetite
23 for people to buy this token.

24 Q Okay. And what was?

25 A I mean --

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1 Q Based on CoinFund's research, what was your
2 opinion about that?

3 A I think in some cases, it was very
4 positive. My concern, as I think I identified, was
5 that we were trying to create an economy here. And
6 there were some of these that I saw that had
7 significant upswings and downswings, and that would be
8 a real negative towards us to developing an ecosystem.
9 Because the minute that happened, there would be a lot
10 of, like, lack of confidence.

11 So it was really critical for us to not
12 have a scenario where we had people buying in for what
13 we later called the presale level that were in support
14 of the product and the missions and that we were trying
15 to achieve as a company.

16 Q Okay. So at this point in time, was there
17 a market for tokens generally out there?

18 A Well, these are not -- aren't these -- what
19 you showed me there, that's some sort of market, I
20 guess, for tokens.

21 Q Yeah. I guess I'm just trying to
22 understand. At the time, there was a market for
23 tokens?

24 A Yes. Yes.

25 Q Okay. And at the time, was your

Page 127

1 understanding that the -- on page nine, there's a list
2 of projects. Do you see that?

3 A That's right, yeah.

4 Q And at the time, was it your understanding
5 that those were examples of tokens that were in the
6 market?

7 A Yes.

8 Q Okay. On the bottom of page seven, there's
9 a line that says, "The following outlines some
10 observations about the token sale space." Do you see
11 that?

12 A I'm sorry. Where?

13 Q Page --

14 A Oh, sorry.

15 Q Just go back one page.

16 A Two pages?

17 Q Page seven, two pages maybe. Yeah. It's
18 got a graph on the top.

19 A Yeah.

20 Q On the bottom, it says, "The following
21 outlines some observations about the token sale space."
22 Do you see that?

23 A Where are you? Oh, here. Okay. Yeah.

24 Q Number one is, "The investment space is
25 extremely hot"?

Page 128

1 A Yes.

2 Q All of the tokens mentioned here have
3 generated returns at the time of writing as measured on
4 a U.S. dollars basis?

5 A Yes.

6 Q The average return multiple is 15X?

7 A Yes.

8 Q So this is something that CoinFund told
9 Kik?

10 A Yes.

11 Q And did that seem right to you at the time?

12 A It may have seemed right, but it was
13 concerning.

14 Q Why?

15 A Because if the market was hot and it had
16 that sort of volatility in it, it was -- as I mentioned
17 earlier, the ecosystem wouldn't survive in the long
18 term. You can't have an ecosystem developing that has
19 huge fluctuations. You have issues with respect to
20 pricing and confidence and everything else.

21 So it was part of a lot of the work that we
22 subsequently did with McKinsey to understand how do we
23 control that and how do we control that also from the
24 investor side. So it was very -- when we went out to
25 get our investors, we were very cognizant of people

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1 that were sort of highly speculative type people.

2 We actually did not accept funds from
3 certain people because of that.

4 Q Who didn't you accept funds from?

5 A There was one gentleman in particular that
6 we met by the name of Brock Pierce. And he was a big
7 influence in the market. And everybody was suggesting
8 we have to be involved in everything else that we just
9 didn't feel comfortable.

10 Q Why not?

11 A Because of the reputation we had. It was a
12 lot of -- I don't know if you've ever seen him or met
13 him.

14 Q I have not.

15 A Well, you can -- there was a lot -- you
16 could take a look and you would listen to him talk
17 about it, and it was not what we wanted.

18 Q Why not?

19 A Because he was the type of person that we
20 felt was a speculator, high-end speculator, would talk
21 about the product a lot and basically get into a
22 pump-and-dump scenario, which would be disastrous for
23 us over the long term.

24 MR. MENDEL: What you're describing are all
25 steps that Kik took to control the volatility on the

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1 token?

2 THE WITNESS: We couldn't -- we can't
3 control the volatility. But what we could do is
4 control the types of players that we brought into
5 the -- from an investor base that were supportive of
6 the project, that understood our mission of what we
7 were trying to achieve, and not necessarily just coming
8 in because they expected a huge run-up.

9 It was probably our biggest concern in sort
10 of getting this thing going, because we would only be
11 successful if over the long term the economy took off
12 and did really, really well. And if it had too many
13 volatile fluctuations at the beginning, we can't
14 control it. But you can try and monitor it a little
15 bit by who you brought into the equation and doing
16 certain things like we did vesting with all of the
17 presale investors.

18 So we had to be confident that they
19 believed in the missions and they would stay in or they
20 vested for at least a year on the half of their stock.
21 And then on the types of users we got in, we wanted as
22 broad a user base as possible. So we didn't -- there
23 were two things that we did.

24 We -- first of all, in spite of a lot of
25 rejection or objection from other people in the

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1 The time is 12:33 p.m.

2 (Recess.)

3 THE VIDEOGRAPHER: We are back on the
4 record. The time is now 1:52 p.m.

5 BY MR. MITCHELL:

6 Q Okay. During the lunch break, did you have
7 any substantive conversations about the case with the
8 staff?

9 A No.

10 Q Great.

11 MR. MITCHELL: Just for the record, the
12 gentleman in the background is Nick Joyson.

13 THE WITNESS: Hi, Nick.

14 MR. MITCHELL: He is an intern working in
15 the enforcement division and is a student at
16 Georgetown.

17 THE WITNESS: Okay.

18 MR. MITCHELL: Do you have any objections?

19 MR. CADIGAN: No objections.

20 MR. MITCHELL: Thank you.

21 BY MR. MITCHELL:

22 Q So before we took -- before we took the
23 lunch break, we were talking about CoinFund and its
24 report to -- that you have in front of you.

25 A Uh-huh.

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1 community, we required everyone to go through KYC and
2 register. I remember the first time I suggested that
3 somebody told us we were nuts that nobody did that.
4 And I said, well, first of all, two reasons. I look at
5 it as a secure -- I look at it as a currency, not a
6 security. That was one of the things.

7 And number two is if people have to
8 register, there's going to be a lot less likely to be
9 people that are just coming in and, you know, having --
10 dumping funds in or whatever else. And then we had a
11 broader base. So we had far more users in the lower --
12 we didn't have any bottomless -- we didn't have a
13 minimum requirement for people to buy in.

14 If somebody wanted to buy in for 50 or \$100
15 and buy currency, they could do that, because they were
16 going to transact in the systems. So the broader we
17 had in that base, the more successful we're going to be
18 as an economy.

19 MR. SCHLEGELMILCH: Okay. And the "we"
20 that you just described, that's Kik?

21 THE WITNESS: Yes. Yeah.

22 MR. MITCHELL: Okay. I'm going to suggest
23 that now is a good time to take a break. We're going
24 to go off the record.

25 THE VIDEOGRAPHER: Going Off the record.

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1 Q Once you got -- once that came in to Kik,
2 what did you -- did you all use the CoinFund's
3 information?

4 A As I said, I wasn't heavily involved in
5 this part of it. I was more involved with taking a
6 look at some of the currency regulations side and how
7 we would handle that part of it. And I'm not sure that
8 it was addressed in here.

9 Q Did you have meetings with Kik employees to
10 discuss the report?

11 A Yeah, we had some meetings. But I can't
12 really recall how many or when they were or --

13 Q I actually have two documents I'll show you
14 that --

15 A Okay.

16 Q -- might relate to that.

17 A Good.

18 Q I'm going to leave Exhibit 39 there if you
19 want.

20 A Sure.

21 Q So I'm going to mark as Exhibit 170 a
22 document that on the top says, "Review of CoinFund
23 Deliverable," March 22nd, 2017.

24 (SEC Exhibit No. 170 was marked for
25 identification.)

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1 BY MR. MITCHELL:

2 Q And it's a -- it has a Bates number
3 KIK_00044719 through 725. So if you could look at
4 Exhibit 170. My first question is going to be: Do you
5 recognize this document?

6 A I don't recall it. But, obviously, I was
7 in the meeting, so --

8 Q On its face, it appears to be somebody's
9 notes of a meeting, and it has the name Peter, right?

10 A Yes.

11 Q Does it -- do you -- I guess -- my first
12 question is: Do you know whose notes these are?

13 A No. I can't recall who drafted the notes.

14 Q Does it -- you earlier said that there are
15 meetings. You didn't remember when or what they were.
16 Does this refresh your recollection about conversations
17 that may have happened around this time to what people
18 were talking about?

19 A By reading it, I can understand right now.
20 If you let me read through it or --

21 Q Sure.

22 A -- if you want -- yeah. Then I can tell
23 you what -- so it looks like this was sort of the start
24 planning document of what needed to get done in order
25 to execute and move forward with Kin, which wasn't

Page 136

1 time.

2 Q So why was -- sorry. That idea of KYC and
3 knowing who was in the -- who was participating that
4 was important to Kik?

5 A It was important, because as a currency, we
6 didn't know at the time whether we would need MTL
7 licensing and all those sort of things. We looked at
8 this as a currency. And we looked at this having to be
9 a money services business. We did not have a lot of
10 internal expertise about that at the time. And so in
11 the first part, the first thing we started to look at
12 was for AML, we needed to have KYC operations in
13 effect.

14 And that's where I mentioned earlier that
15 was something that was not really done in the space at
16 that time. And some of our investors said that it
17 would deter people from buying in because they wouldn't
18 want to be giving all of their information and
19 everything else.

20 And I said that's fine with me. Those
21 aren't the type of investors we want in the presale
22 stage. And then we -- then the question became is, is
23 the -- one of the issues was does the money service
24 business, is that part of the foundation or is it part
25 of Kik. And so that was another question we had at the

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1 called Kin at the time.

2 Q Sure. Do you remember -- just trying to
3 see if there's anything else you remember about what
4 people talked about, what the key issues were.

5 A Like I would have been focusing on my area,
6 so a lot of it was -- I still had extra questions, it
7 says here. How the operating mechanisms, whether we
8 need a separate entity, who does governance.

9 Q Were those issues that you remember
10 considering?

11 A Yes.

12 Q Okay. But just sort of moving forward from
13 this point, do you remember -- what else do you
14 remember about the plan?

15 A The big question at this time, like from my
16 end, was the identity as a baseline issue for crypto.
17 That was a big part of the discussion.

18 Q What do you mean?

19 A Identity in terms of doing KYC and
20 understanding who was going to be in the ecosystem and
21 who is buying the currency. So the big concern there
22 being, like, money laundering and all those different
23 aspects, which was something I was a little bit aware
24 of when we did the Kik cash. But we had another person
25 running that, but I remember some of the issues at that

Page 137

1 time.

2 Q Let me go back to the KYC. That's know
3 your customers?

4 A Yes. Exactly.

5 Q So the KYC, was that were -- were there KYC
6 issues -- when you say presale, do you mean the sale of
7 something to accredited investors?

8 A It was to accredited investors and also
9 nonaccredited investors.

10 Q The overall sale?

11 A The overall sale.

12 Q Okay.

13 A So it's also for, like, participants that
14 were coming in. Like, you know, somebody could
15 participate in the ecosystem and launder money through
16 that if we didn't know who they were.

17 Q Oh, so did Kik KYC -- anyone who ever owns
18 a Kin token has to do this?

19 A Not everyone. There were sort of -- in
20 consultation -- and some of it is privileged. We had
21 limits in terms of what we felt was reasonable. And we
22 actually hired someone that had AML expertise to help
23 us develop a system for, A, registering everybody in
24 the token sale, and then doing KYC on all of them.

25 Q Okay. But after the token sale, did Kik do

Page 138

1 anything to limit or know who was buying Kin tokens
 2 after that?
 3 A No, because most of that would be done by
 4 the exchange, people that had the accounts already to
 5 set up. Like we would have to -- we were distributing
 6 Kin. But once Kin was trading out there in the
 7 ecosystem and people were exchanging on the theorem or
 8 whatever, that's no longer -- that's now the exchange's
 9 responsibility from a KYC standpoint.
 10 Q So this -- that wasn't -- Kik's concern was
 11 sort of regulatory issues around the actual initial
 12 sale?
 13 A Yes, from a currency standpoint. So it was
 14 also --
 15 Q Sorry. Please go ahead.
 16 A So also with the banks, we'd also be
 17 concerned about that. There was a big issue with
 18 banks. At that time that we had KYC, we knew who our
 19 customers were.
 20 Q And the KYC issue that you were discussing
 21 before about wanting to know who was buying, was
 22 that -- was that in terms of accredited investors or
 23 nonaccredited investors?
 24 A Both.
 25 Q Was there ever a plan to sell to accredited

Page 140

1 before?
 2 A Yes, I've seen it before. I'm commenting
 3 on it. So, obviously, I've seen it before. I don't
 4 recall all of the aspects of it, but I have seen the
 5 document before.
 6 Q Sorry. You're commenting on it, in one of
 7 the comments on the right?
 8 A Yeah. PH.
 9 MR. CADIGAN: Try to let him finish his
 10 question.
 11 THE WITNESS: Oh, sorry.
 12 BY MR. MITCHELL:
 13 Q I appreciate it. Sorry. Can you just
 14 point me to the PH?
 15 A On the first page, it says PH.
 16 Q Oh, sorry. So there's an area there that
 17 says PH. You think that's actually text you wrote?
 18 A That would have been, yes, stuff I wrote.
 19 Q Got it.
 20 A If this was a Google doc, which I think it
 21 was.
 22 Q Okay. So on the second page, there is a --
 23 do you see there's a section that says "goals"?
 24 A Yes. Sorry. Where? On the second page --
 25 Q There's a -- two-thirds of the way down

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1 investors who you didn't know their identity?
 2 A No.
 3 Q Okay. I'm going to just hand you what's
 4 been marked as Exhibit 79.
 5 A Do you want this one back?
 6 Q Sure. I'll take that one back. I'm going
 7 to literally just start you off with the same main
 8 question, which is: Do you recognize this document?
 9 A Yes.
 10 Q On the top, it says -- sorry. If you
 11 recognize it, what is it?
 12 A It's a result of crypto survey that was
 13 done. But I can't recall who did the survey, whether
 14 it was Kik or CoinFund.
 15 Q You're recognizing the box -- the
 16 information in the box on the first page?
 17 A Yes.
 18 Q Flipping actually through Exhibit 79. Do
 19 you recognize this document? Have you ever seen this
 20 before?
 21 A It looks like it's a Google -- was it a
 22 Google doc?
 23 Q That's what it appears to be.
 24 A Yeah.
 25 Q Is this something you think you've seen

Page 141

1 there, it says "goals."
 2 A Oh, yes. Okay.
 3 Q And then there's a paragraph that says HK,
 4 and then a paragraph that says PH.
 5 A Yes.
 6 Q And it just says, "I'm not sure if my one
 7 concern should raise here. But the crowd funding model
 8 is based somewhat on the investor also being engaged
 9 with the ecosystem at the onset. There is likely a
 10 mismatch here between the investors and our user base."
 11 Do you see where I read that?
 12 A Yes.
 13 Q Was that -- was that true at the time?
 14 A That wasn't my thought. They might likely
 15 be, but I had no way of knowing.
 16 Q Well, what made you think that?
 17 A Because it depended on the types of brands
 18 that we got involved in. And we had, like, a lot of
 19 brands involved before. And because we didn't carry
 20 any user information or anything else, a lot of them
 21 got disenchanted with the user base, but it was more a
 22 function of them not knowing who they were.
 23 So the one I can think of where it was
 24 successful was Sony where they actually -- a lot of
 25 people registered for their thing, so they were quite

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1 pleased with the hope that they have for now. And it
2 was sort of a bit of a hit-and-miss with the brands,
3 because we didn't have any user information.

4 **Q At the time, were you concerned that there**
5 **would be a mismatch between investors in the token and**
6 **the Kik app user base?**

7 A No, not a mismatch between those two,
8 because the investors were the presale investors that
9 were coming in for supporting the project. And those
10 were buying a share and a security under a presale
11 context. The user base was totally different. They
12 were buying it to integrate or primarily buying it for
13 integrating into the ecosystem and having coin to use
14 in the ecosystem. So that's what I basically recall
15 speaking about here.

16 **Q So your thought about "our user base,"**
17 **that's not the user base of the Kik messaging app?**

18 A Yes. That's why I'm saying there is likely
19 a mismatch here between the investors. I think what we
20 were referring to there is presale investors and our
21 user base. I know the brands are a more sophisticated
22 sale, but approaching them as a promotional purchase to
23 drive users to say they're bought -- users to say
24 they're bought on an option -- I'm not sure.

25 This doesn't even make sense, that last

Page 143

1 sentence. I was trying to recall what I was meaning
2 there. I don't really recall that specific sentence,
3 what I was trying to get across there.

4 **Q So at some point, did you ask -- did you**
5 **ask Kik some follow-up -- CoinFund follow-up questions**
6 **to that report?**

7 A No. I wasn't -- like I said earlier, I was
8 quite heavily focused on getting all the KYC stuff in
9 order and registering. We had over -- I think we had,
10 like, 17,000 people register. And at that time in the
11 blockchain space, there were -- now there's all sorts
12 of services that do the KYC element. At that time,
13 there weren't. So we had to, A, find somebody that had
14 AML experience, which none of us had in the company,
15 which we could.

16 We hired a guy named Scott Benson. And
17 then we had to develop a system that took in all of
18 those registrations for KYC and validate them.

19 **Q And that was in September?**

20 A No. This was in preregister. This was
21 already starting in April, May.

22 **Q In April, May, Kik was preregistering**
23 **people for the public sale?**

24 A Yeah.

25 **Q Okay.**

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1 MR. MURTHA: Had Kik announced the public
2 sale in April?

3 THE WITNESS: Sorry. It was May. We came
4 out of it in May. In the New York summit, that's where
5 we announced the public sale. So it would have been
6 May.

7 BY MR. MITCHELL:

8 **Q That you started pre-registry?**

9 A Yeah. Well, I think we announced then, but
10 I can't really recall exactly when we hired Scott. It
11 would have been in that time frame, though.

12 **Q Okay. Leaving aside that, was there a**
13 **point of which you asked CoinFund follow-up questions**
14 **to the report that we looked at?**

15 A I can't recall. I may have.

16 **Q That's fine. I'm going to give you, I**
17 **think, those questions.**

18 A Okay.

19 **Q It's Exhibit 171.**

20 (SEC Exhibit No. 171 was marked for
21 identification.)

22 BY MR. MITCHELL:

23 **Q It's a single piece of paper, but it's**
24 **two-sided. It's CoinFund_009764 to 65. And on its**
25 **face, it appears to be an e-mail from you to Jake at**

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1 CoinFund --

2 A Yeah.

3 **Q -- from March 24th, 2017. Do you recognize**
4 **this?**

5 A I don't recognize it. But if you give me a
6 second, I'll just read it.

7 **Q Sure.**

8 A Yeah. So the additional questions I'm
9 asking is, one, this is pretty much a business
10 negotiation in the sense of how much money was it going
11 to cost and how many hours of consulting would it be.
12 So I wanted to get some feedback from him, because I
13 didn't want to run up a huge bill at the time.

14 And the second one was that if we took the
15 timeline as the coin summit being May 24th where we
16 were announcing, I wanted to understand what the
17 timeline going back was, and then started to -- here is
18 where we started asking questions about, like, KYC and
19 COPA.

20 **Q What's COPA?**

21 A COPA is for underaged kids, like privacy
22 information, that sort of thing. Because we had a lot
23 of younger kids on the platform, too, so we had to make
24 sure we were in line with that. We weren't -- there's
25 sort of marketing restrictions and advertising

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1 restrictions in that.

2 Q Was there an attachment to the e-mail?

3 A To this e-mail? This is the back, I guess.

4 Q I'm just -- on the first page, there

5 appears to be an attachment. And then we received

6 what's on -- the back page is what appears from the

7 production to be the attachment to this e-mail.

8 A Yeah. So this is probably what we need to

9 understand.

10 Q Are these questions that you provided to

11 CoinFund?

12 A I guess so if it was attached to the -- as

13 part of the e-mail. So -- yeah. So these would be

14 questions. I would like to structure the economy and

15 mapping of all of the stakeholders.

16 Q Was that something that was important at

17 the time?

18 A Yeah, because we had to understand -- for

19 the economy to flourish and to function, what did we

20 need in that. That was probably one of the most

21 challenging pieces. So that's where we eventually

22 hired McKinsey and that sort of thing. We also had

23 secondary, like, regulatory bodies, like FinCEN.

24 And we had all the state licenses we did a

25 lot of work with, like depending on how the structure

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1 of the wallet was, i.e., if we had control over some

2 aspect of it, and the ability to -- for people to send.

3 And we weren't part of that transaction. We needed MTL

4 licensing. So that was a big issue.

5 So we had done a lot of work in looking at

6 each of the individual states. And then, if we had to

7 go the MTL route, how long would it take us to get

8 there. And we had certain states that were classified

9 that we could probably apply and get a license.

10 Some other states where it would take six

11 to 12 months, and then some other states like New York

12 where you would take, like, probably 18 months to get a

13 license. So one of the issues for us was how do we

14 look at accelerating if that's the regulatory side that

15 we were going to follow.

16 And from my end, I felt strategically it

17 would be really good to be in that, but it was just a

18 long time frame to get all of that in place. And so

19 there were other methods of doing that whether -- on

20 how the product was designed and that sort of thing.

21 So that was the first question. Second question --

22 Q Let me ask you --

23 A I'm sorry.

24 Q Let me ask you a different question.

25 A Yeah.

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1 Q How did you draw these up?

2 A How did I draw these up?

3 Q Are these your personal questions? Did you

4 consult with other folks at Kik? Where did these

5 questions come from?

6 A A lot of these were -- some of them were my

7 personal questions. Eileen wasn't on board at the

8 time, so I wouldn't have asked her. But I'm not sure.

9 Like, I probably would have had input from other

10 people, but I just can't recall who they were at the

11 time.

12 Q Other than these questions that are here,

13 do you remember any other way that you sort of put

14 questions to CoinFund and asked them to answer?

15 A I can't recall.

16 Q Did CoinFund answer your questions?

17 A Some of them. Some of them we had to do.

18 Because as they outlined in their agreement, they're

19 not providing legal advice.

20 Q Sure.

21 A So some of that, we had to get counsel.

22 And I guess some privileged stuff with both Blake's and

23 Cooley's.

24 Q Great. Let me have 171 back. And I'm

25 going to give you what was marked as Exhibit 54. On

Page 149

1 its face, it's an e-mail from Jake Brackman to you and

2 some other people, Ms. Kim, Ms. Clift, CoinFund, on

3 April 3rd. And it appears to have -- there's a -- this

4 is a -- couple of things that don't -- aren't all on

5 the same Bates numbers. So you can see there's a --

6 the first page actually is Bates numbered

7 CoinFund 020091.

8 And it says, "Please find below the

9 additional research deliverables for today." And it

10 lists a couple of things, including consolidated

11 questions document?

12 A Yes.

13 Q And then Kin token roadmap.

14 A Uh-huh.

15 Q So what I'm looking to find out is -- if

16 you look on the next pages, it starts with CoinFund

17 019854 and runs to 019884. Do you recognize the

18 document that's sort of -- that's the second page to

19 the end that is titled "Additional Research"?

20 A Yes.

21 Q What is this?

22 A This is answers to the questions. So in

23 the first case, I asked the question here, what is the

24 structure of the economy and mapping of all the state

25 quotas, both primary and secondary, and regulatory was.

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1 I had no idea how the flow of the product sale went,
2 and so I didn't at that time really even know at that
3 point what a token sale contract was.

4 So it was still at education at that point,
5 because these questions were all the way back from the
6 third week in March. So that was how the economics
7 worked.

8 Q If you look at the page that's
9 CoinFund 019855.

10 A Right.

11 Q Is that your question, sort of in the
12 middle of the page about --

13 A Yes.

14 Q -- what is the structure of the economy?
15 Is that your question?

16 A Yes.

17 Q And then below that, is that their answer?

18 A Yes.

19 Q So I think you said you were -- what's the
20 chart that's on the bottom of that page?

21 A Well, it says -- it defines who the
22 entities are. So there's Kik Interactive. There's a
23 smart contract in-between.

24 Q Is this a chart of how the Kin -- how the
25 proposed token sale would work?

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1 A Yes.

2 Q Or at least who the participants would be?

3 A Yes. However, at this point in time, I
4 don't think we had -- we still hadn't discussed the
5 split between presale and participants. So token sale
6 participants was a little bit -- not sure what the
7 definition was at that point in time. I can't recall.

8 Q Well, what was the plan that you discussed
9 with CoinFund at this time?

10 A It was just to get an overview for me as to
11 how this whole thing works. I had no idea or
12 understanding how you set up cryptocurrency sale,
13 what's involved in it, all that sort of stuff. So this
14 was very early on in the process. And then what we had
15 to be aware of. So it was very much still an
16 investigative stage and understanding stage for us.

17 Q So at this point in time, had Kik
18 considered the idea of selling some things to
19 accredited investors and some to nonaccredited
20 investors?

21 A Yes. There was -- I don't know if it was
22 at this meeting, but there was a meeting later on in
23 terms of what that split would be like. And I think
24 Fred proposed 75-25 for presale investors versus
25 participants, like users. But Ted was quite adamant

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1 that we needed at least a 50-50 balance to really get
2 the economy going, because we needed enough
3 participants in the ecosystem in order to make it
4 drive. So that was what -- that's the only discussion
5 I really recall.

6 Q So the chart that's on the page that ends
7 in 855 --

8 A Yes.

9 Q -- what did you understand they were
10 telling you and Kik?

11 A I was just wanting to understand the flow
12 of funds. That was the main piece in this part.

13 Q Okay.

14 A Who the participants are.

15 Q So did they describe a flow of funds where
16 funds flowed from two different circles to Kik
17 Interactive?

18 A I can't really recall. I'm just looking at
19 the diagram now. I can't recall at the time. I
20 can't -- sorry. My eyes aren't -- so what's this on
21 the one vertical -- on the one private --

22 Q The top circle appears to say private
23 investor.

24 A Right.

25 MR. MURTHA: Private commitment.

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1 BY MR. MITCHELL:

2 Q And then private commitment is on the green
3 arrow running towards Kik.

4 A Okay.

5 Q And float is on the yellow arrow going
6 towards private investor.

7 A Right. Reallocation.

8 Q On the far right, there appears to be a
9 circle for crypto investor with buy-in, heading towards
10 the token sale contract, and float going towards them.
11 Is that what it looks like to you?

12 A Yeah, it does. But I can't really recall
13 at this state what my questions were on it or whether
14 it satisfied my questions.

15 Q The way it appears is that CoinFund is
16 saying that there are private investors and crypto
17 investors, both of which would pay something and get
18 part of the float. Is that how you would read that?

19 A I guess so. But I don't understand why
20 they aren't saying, like why -- oh, sorry. So
21 initially, they wouldn't go through -- the initial
22 private investors wouldn't go through a smart contract
23 out to start. Stage two would be the participants in
24 that, buying in and getting actual smart contract. And
25 then the private investors would convert from what

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1 their commitment was, like, under the -- what we ended
2 up using was SAFT.

3 And then they would convert to the token
4 sale contract. And in the private investor's case,
5 that contract had a provision in it where there was
6 vesting for a year. So it was a different contract
7 effectively.

8 **Q Just half their token?**

9 A Exactly.

10 **Q So in this chart, the private investor,**
11 **those are the folks -- this was eventually -- when this**
12 **happened, those are the accredited investors who bought**
13 **SAFTs?**

14 A Yes, that's what I would assume from this.

15 **Q And crypto investor is the people who**
16 **bought in the public sale?**

17 A Yeah. I mean, we didn't really have, like,
18 set nomenclature at that time.

19 **Q But, actually, if you go to the next page**
20 **at the top, do you see the text that says, "Crypto**
21 **investors include regular participants of token sales,**
22 **as well as Kik users who are participating in the sale**
23 **by way of cryptocurrency; private investors include**
24 **Kik's private entity investors, e.g., USV, as well as,"**
25 **quote, "institutional cryptocurrencies," unquote,**

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1 **that's not what -- that's not how we use the word**
2 **"cryptocurrency"?**

3 A Quite frankly, at that time, I didn't think
4 it was relevant.

5 **Q What wasn't relevant?**

6 A The nomenclature at that time.

7 **Q What makes you think it was -- later on,**
8 **did you think it was relevant?**

9 A As we got more into definition, it was
10 relevant, because we were defining presale investors
11 far more so, and then crypto investors, and then also
12 the participants and users in the ecosystem.

13 **Q What made you -- what made you think later**
14 **that nomenclature was relevant?**

15 A Because we had a lot of discussion, and
16 people were getting confused both inside and outside of
17 the company.

18 **Q Who did you have that discussion with?**

19 A Which discussion? Sorry.

20 **Q The discussion that you just described**
21 **where there was people --**

22 A It was just amongst management. I remember
23 there was one meeting where we said, look, we've got to
24 really be definitive here in what our nomenclature is.
25 And so that evolved over a period of time. It

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1 "such as DCs looking to purchase crypto asset exposure,
2 e.g., Blue Yard, or any third-party investor desirable
3 to Kik." Do you see that?

4 A Yes.

5 **Q So CoinFund had nomenclature, right?**

6 A No. It wasn't clear to everybody in the
7 company. That was defined later on. When we got to
8 the white paper was the first time I recall the actual
9 definition of breaking everybody down.

10 **Q What's not clear to you? What do you --**

11 A Well, no. What I'm saying is that they --
12 the nomenclature put everybody into one group as buying
13 at that point in time, but we had separation later on.
14 When you take a look at Kik users and crypto investors
15 in -- I believe it's even in the white paper.

16 It states who the various participants are
17 in the ecosystem. This document is from, like, the
18 beginning -- end of March, I guess, beginning of April.

19 **Q Sure. This is -- this document says what**
20 **CoinFund meant when it said crypto investors, right?**

21 A CoinFund might have meant that is not how
22 we looked at it, not how it was eventually defined in
23 the white paper.

24 **Q I see. Leaving out how it might be**
25 **eventually defined, did you talk to CoinFund like, boy,**

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1 wasn't -- it wasn't something that came out right at
2 the start.

3 I mean, when you look at this document,
4 we're still trying to figure out, or at least I was,
5 what the structure was and how the process and the
6 economics worked. I wasn't down to the detail of,
7 like, whether this user or that user in terms of the
8 discussion.

9 This was giving me an overview in terms of
10 what the economics setup was and how the funds flow
11 would work for the purposes of a lot of cases of
12 understanding, like, do we need, like -- I think we go
13 into further discussion about MTL and how we have to
14 look at it from a currency perspective.

15 **Q In this document, CoinFund told you how it**
16 **defined the word "crypto investor," right?**

17 A Yes. But for the purpose of what I was
18 looking for here in the question, it wasn't relevant to
19 me. Okay? I wanted to understand how funds flow would
20 work. As I said, I didn't even know what a token sale
21 contract was at that point in time.

22 **Q It looks like this got sent -- Mr. Brackman**
23 **sent some information on the first page of the document**
24 **to you and Ms. Kim and Ms. Clift. What -- sort of**
25 **what -- what happened next? It's early April. How did**

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1 you use -- how did you use CoinFund's work?
 2 A Well, we understood here in terms of how we
 3 would be looking at our funds flow in the overall
 4 economics. So the ecosystem would work. But then the
 5 thing that was really relevant to me was, like, what we
 6 had to comply with from various regulatory authorities.

7 Q What regulatory authorities?

8 A In this case, it was FinCEN, which is
 9 Department of Treasury, the SEC, CFTC, and the IRS.
 10 So --

11 Q Let me just find that document again.

12 MR. MURTHA: Kik is a Canadian company,
 13 right?

14 THE WITNESS: Yes.

15 MR. MURTHA: How come the OSC wasn't on
 16 there?

17 THE WITNESS: The OSC was basically -- like
 18 we didn't -- we didn't -- with this point in time, we
 19 didn't think about the OSC because we -- it was like --
 20 the OSC came up later on when William had raised it
 21 back, like, in August.

22 BY MR. MITCHELL:

23 Q What did he raise?

24 A He had raised -- it was probably around end
 25 of July. We had made the assessment -- again, it's

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1 sort of wanted to know about our offering. They were
 2 getting questions. And we didn't want to put them off
 3 side of anything, so felt we would go in and educate
 4 them on what we were doing. And William was very
 5 specific in saying that you have to -- they don't
 6 understand a lot about cryptocurrency, so you have to
 7 take it in really slow steps with them.

8 Q What do you mean that they had questions
 9 about your offering?

10 A They were getting questions about our
 11 offering.

12 Q How did you know that? How did you know
 13 that?

14 A He told us.

15 Q William did?

16 A Yeah. William was an advisor with us at
 17 the time, and he had told us that. And so he said we
 18 talked to counsel, and he suggested --

19 Q Wait --

20 MR. CADIGAN: Yeah. We're going to
 21 caution --

22 THE WITNESS: I'm sorry.

23 BY MR. MITCHELL:

24 Q If the sentence starts with, "We talked to
 25 counsel" --

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1 privileged with counsel -- that we didn't feel this was
 2 a security, and so therefore we had no need to really
 3 go in to see the OSC at the time. William raised the
 4 issue. It was more from a community aspect. He said
 5 that the OSC is really nescient on this stuff.

6 They didn't really have a clear
 7 understanding. And they were getting questions about
 8 Kik and what we were doing in terms of cryptocurrency.
 9 Because by that point in time in May, it had been
 10 announced in May. And then we ended up going into the
 11 OSC, and he raised this probably around -- I think it
 12 was the end of July.

13 Q Sorry. You ended up doing what?

14 A Going in to meet with the OSC around
 15 August.

16 Q How did that happen?

17 A We had Ross McKee, our counsel, write Pat
 18 Chaulkus, who was head of what is called Launch Pad --
 19 or he's head of a group. I don't know the exact name,
 20 but he's head of a group that looks at sort of all of
 21 these new FinCEN type initiatives.

22 Q Why have him do that?

23 A Sorry?

24 Q Why have him reach out?

25 A Because we had heard that they were -- they

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1 A Yeah. Okay.

2 Q -- "and we," then just think it through.

3 A Okay.

4 Q Some of it is fine, but just make sure. So
 5 just tell me again -- continue on where you were, but
 6 just don't tell me about a conversation you had with a
 7 lawyer.

8 A So a meeting was set up to meet with Pat.

9 Q At Kik's request?

10 A Yes.

11 Q Okay. Was the -- the April 4th document
 12 that you have in front of you, was that shared with
 13 people other than you and Ms. Kim and Ms. Clift at Kik?

14 A I can't recall if it was shared with
 15 anybody else. It was probably -- sorry. What was that
 16 listing of the -- so some of these documents likely
 17 went to other people, but I'm not sure whether this
 18 whole -- because it says as per Ted's request or
 19 white -- rough outline of the white paper table of
 20 contents, rough roadmap, and then my questions.

21 So some of these documents quite likely
 22 were distributed to other people in the company.

23 Q Were they discussed with the board?

24 A Not -- I'm not sure if this specific
 25 document was discussed with the board, but some of the

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1 issues surrounding this would have been discussed with
2 the board.

3 Q Okay. So at this point, we're in early
4 April. I apologize. Can I have that? I just want to
5 see what -- I lost my document.

6 So what was -- after this -- after you got
7 in the second report from CoinFund, was it you went
8 straight to a board meeting or were there discussion?
9 I'm trying to get a feel for what was happening at this
10 point.

11 A I can't recall the order of sequence, but
12 we did discuss with the board about that we looked at
13 us having to be an MSB, a money services business. And
14 so we had set up a subsidiary company called Kik
15 Digital Services.

16 And it would be responsible for issuing the
17 tokens and running all of that sort of stuff and would
18 eventually -- the thought process was that the
19 foundation would take that over on a longer term basis.
20 And so that was all set up, and that I believe -- I
21 can't recall for sure, but I think the KYC operations
22 were part of that process, also.

23 Q At this point in early April, had the board
24 approved the idea of moving forward?
25 A Yes.

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1 Q Okay. Did management provide CoinFund's
2 work to the board?

3 A I can't recall. In terms of, like -- I
4 don't know if the report was issued. It's quite likely
5 that some of the slides were. We prepared slides and
6 presented them to the board so they understood what the
7 issues were.

8 Q So I'm going to give you what was marked a
9 while ago as 16A. It's a -- on its face, it's a Ted
10 Livingston to the board e-mail from April 10th. He has
11 some attachments. These are Bates number KIK_00106656
12 through 714.

13 My first question is going to be: Do you
14 recognize what this is?

15 A Yes, I recognize what it is.

16 Q What is it?

17 A It was a presentation that was made to the
18 board summarizing what the works were on the crypto
19 initiative.

20 Q And if you look at the page --
21 A And he did -- he said, "I've also added
22 CoinFund's research deliverable."

23 Q If you look on the page that ends in 657.
24 Is that -- 657 on, is that the -- is that the CoinFund?
25 A I'm sorry. 657.

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1 Q Bates number in the bottom right. Sorry.
2 Yeah, that ends in 657. You have a two-sided document.

3 A Oh, okay.

4 Q You don't have the original, I think. So I
5 think it's single-sided. There's a document that has
6 at the top CoinFund and the Bates number 657.

7 A Yeah.

8 Q So is that the --
9 A Yeah.

10 Q That's CoinFund's deliverable?
11 A Yes.

12 Q And the rest of it is a slide deck for the
13 board?
14 A Yes.

15 Q Did you have a role -- do you know how
16 these slides were put together?

17 A Let me just take a look through. I can't
18 recall who exactly prepared them. It could have been
19 probably a combination of a number of people.

20 Q If you turn to the page that ends in 720,
21 it has the words "key phases" at the top.
22 A Yes.

23 Q And it says research phase, white paper
24 phase, token sale phase, Kik product integration phase,
25 cross platform analysis.

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1 A Yes.

2 Q What is this discussing?

3 A This is the different elements that we
4 would have to do for getting us off -- getting us off
5 the ground.

6 Q Getting what off the ground?

7 A Getting off the whole economy and doing the
8 crypto sale.

9 Q Okay. And so what are -- the first one was
10 a research phase?

11 A Yeah.

12 Q Was that complete by this point in April?
13 A Yeah, the preliminary was. That's the
14 report that was attached on this.

15 Q Okay. And then what was the white -- then
16 there's a second that says white paper phase?

17 A Yeah.

18 Q What was that?

19 A That was the white paper.

20 Q And that had not happened yet?

21 A No. And I don't think these were at the
22 time in any necessarily chronological order. They were
23 just different elements we needed to do.

24 Q Was there ever a plan to do the token sale
25 before the white paper?

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1 A No.

2 Q Was there a plan to do the Kik product
3 integration before the white paper?

4 A Not eventually, no. Once we went through
5 and understood different elements, that was not the
6 case.

7 Q So if you could turn to the page that says
8 "white paper phase." There's a page that just says
9 "white paper phase." Then the next slide says "roadmap
10 to white paper." Do you see that?

11 A Yes.

12 Q At this point, did Kik plan to announce the
13 white paper at the Token Summit in May?

14 A I think we announced that we were going to
15 do a token sale, but I'm not sure if we had the white
16 paper published at that time yet or not. I honestly
17 can't recall.

18 Q Okay.

19 A We might have had it, but I can't recall if
20 it exactly went out at the same time.

21 Q If you could flip to the next page. You
22 see it says "token sale phase."

23 A Yes.

24 Q And then the next page says general roadmap
25 areas to token sale. Do you see that?

Page 167

1 A Yes.

2 Q And then, just looking at this, did Kik at
3 this time at least plan to launch the token sale in
4 July?

5 A I think that was the initial thought
6 process, yes.

7 Q What do you remember about sort of this
8 April meeting, how people responded, what they thought,
9 what was discussed?

10 A I honestly can't remember.

11 Q Okay. Do you remember -- do you know --
12 did Mr. Livingston sort of walk through these slides
13 with the board?

14 A Yes, he would normally.

15 Q So sort of taking it from April, what was
16 your part of the Kik -- the Kin or the -- what became
17 eventually the Kin project from April going into May?

18 A I'm still trying to recall as to what
19 happened when, but we were still taking a look at --
20 the couple of key things was, like, banking for receipt
21 of funds, because we had heard a lot of the Canadian
22 banks weren't accepting crypto funds.

23 So that was one of the discussions because
24 we need to have somewhere to deposit. So that was one
25 of the discussions going on with our bank. We had to

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1 assess again the KYC requirement and how we're going to
2 put that in place. And we were evaluating different
3 services that could provide different aspects of that
4 process. Again, now, all of that is sort of a lot
5 cleaner.

6 But at that point in time, there was --
7 none of this was available because we're the first ones
8 doing KYC. So that was a big part of it. Then the
9 questions around whether we needed MTL licensing or not
10 and registering for FinCEN, which we actually did
11 register for FinCEN. And then another big push at the
12 time was to get somebody with banking experience,
13 because we were using different people for different
14 aspects, but we had no one internally that had a lot of
15 banking experience as far as regulatory goes.

16 And that was filled with Eileen, but I'm
17 not sure if we were recruiting already at the time. I
18 don't think Eileen joined until probably August --
19 July, August. And that's Eileen Lyon, just to be
20 clear.

21 Q Got it.

22 MR. MENDEL: And she worked primarily from
23 her home in Los Angeles?

24 THE WITNESS: Yes. Well, she was up quite
25 a bit initially. But then she did work out of Los

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1 Angeles.

2 BY MR. MITCHELL:

3 Q During this period, were you doing -- was
4 Kik doing any more research about the market for
5 tokens?

6 A I can't recall.

7 Q Do you remember anybody else -- after
8 CoinFund finished its work, do you remember anybody
9 doing research on the market after that?

10 A I honestly can't recall. Like it was -- we
11 were pretty stretched as a company in the sense that
12 everybody had their areas. So Erin and Hayeon and the
13 marketing team handled all the community and user base
14 information and everything else. I was on the finance
15 side and also the regulatory aspects, which again we
16 mostly focused around how do we, you know, deal with
17 the MTL issues and all of that sort of thing.

18 Because what the challenge was at the time
19 is that the technology was relatively new, so the
20 integration was really difficult. So -- but every time
21 you change an aspect of the integration or how you were
22 going to go to market with the product integration, it
23 would change the regulatory requirements.

24 Q Product integration to what?

25 A For Kik and how the coin was within the

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1 ecosystem. Like if we had users in the ecosystem
2 holding a wallet and we were managing the wallet,
3 there's a pro and a con for that. Okay? The pro is,
4 is that if somebody loses their, like, Coinbase, as an
5 example -- I don't know if you're familiar with
6 Coinbase. So Coinbase has control. They operate like
7 a full bank. They have control of your wallet.

8 So if you lose your key and your private
9 key, they can get it back for you like a bank can.
10 That doesn't happen in the crypto space. Like once you
11 create your wallet and you got your address, you're
12 signing off, you're the one that's in control of it.
13 If you lose it, you've lost your cryptocurrency. So
14 every time you change something in the product design,
15 you change the regulatory requirements.

16 And that was always a big undertaking for
17 us. It was extremely late. Okay. Well, now you've
18 done that. Now we've got to go back and take a look at
19 what effect that has. So a lot of that -- a lot of the
20 work at the time is understanding, under sort of the
21 banking rules, did we require MTL licensing or didn't
22 we.

23 Q Did Ms. Kim or Ms. Clift do independent
24 research about the market for people who wanted to buy
25 tokens separate from CoinFund?

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1 A I honestly can't recall right now. They
2 might have, but I can't recall.

3 Q Did Kik hire anyone other than CoinFund to
4 do that kind of research?

5 A I know they had -- we had someone from
6 branding we hired. So that was to come up with the
7 name Kin. We didn't have a name for the product to
8 start with.

9 Q Is that do you remember the name of the
10 company?

11 A No, I can't remember.

12 Q Is that Sylvain Labs?

13 A Yes, Sylvain. That's it.

14 Q Did Sylvain Labs research the market for
15 who want -- for people who wanted to buy tokens?

16 A I'm not sure what they did, whether they
17 did market research or they did focus groups or they
18 did whatever at the time.

19 Q But did they research that market, the
20 market who -- what the market was for selling tokens?

21 A I can't -- no, they wouldn't have done
22 that. They would have done more from the user bases
23 to, like, how would they use it, what was their
24 understanding of it, so what sort of name resonated
25 with everybody. That's what their thing would be.

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1 Q I'm going to give you what I marked as
2 Exhibit 172.

3 (SEC Exhibit No. 172 was marked for
4 identification.)

5 BY MR. MITCHELL:

6 Q This is, I think, the last of the -- what
7 is this document? This appears to be an e-mail from
8 you to Jake Brackman, April 28, 2017. Subject,
9 "Kik-Cointree Presentation."

10 A Uh-huh.

11 Q And it just says, "Hey, Jake, here is the
12 revised vision document that Ted spoke about
13 yesterday." And then the first slide says, "The future
14 of chat."

15 Do you recognize this?

16 A I don't recall it, but I recall there was
17 something done that we were in a meeting and Jake was
18 asking about the document. But this would have been
19 probably Hayeon and Erin that would have prepared this.

20 Q And do you remember anything else about it?

21 A No.

22 Q On page 147, there's a point of -- there's
23 a slide that says "third-party motivation" --

24 A Yes. All I know under a consortium, what
25 we were looking for is there are large players that

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1 have a lot of user base that -- that was one of the
2 things we were always talking about, is that this is a
3 decentralized currency, to get more people to adopt the
4 currency.

5 Q As of the time that Kik sold the Kin tokens
6 to the public, did a consortium exist?

7 A No.

8 Q There's also just a discussion in this
9 document about open source in the Kik platform?

10 A Yeah. Yes.

11 Q Has Kik ever open sourced a platform?

12 A Yes. Yeah.

13 Q When did that happen?

14 A I don't know the exact date, but I can tell
15 you I was in Japan. We were doing some work over
16 there. And there was a group that we were working with
17 that happened to be from Toronto, but they were living
18 in Japan for 15 years. And the guy actually went to my
19 high school, it turned out. But anyways, it's besides
20 the point. He ended up saying that, "Actually, some of
21 the code you guys have is really good. I've used it
22 for our" -- they were doing an enterprise-based
23 blockchain. So they were using our code from the open
24 source site in their product.

25 Q Has Kik open sourced the code for the

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1 messaging app?

2 A No. I think they've -- that's something

3 they were working on. I'm not sure if it ever did

4 happen or not or where it's at.

5 Q So was the code that you were discussing --

6 A Was more blockchain.

7 Q That was code around the offering itself?

8 A Around the currency.

9 MR. MENDEL: Were they using it to

10 interface with Kin?

11 THE WITNESS: Yes. Sorry. When you say

12 "they," who were you referring to?

13 MR. MENDEL: The people you ran into in

14 Japan.

15 THE WITNESS: No. They were using the code

16 base for the blockchain part of it.

17 MR. MENDEL: To do their own --

18 THE WITNESS: Yeah. Because it was

19 enterprise-based.

20 MR. MENDEL: Okay. But it was to do

21 something separate and apart from Kin?

22 THE WITNESS: Yes.

23 MR. SCHLEGELMILCH: Okay. I just wanted to

24 make sure I understood.

25 THE WITNESS: Yeah. My reference to that

Page 175

1 comment was: Was it open sourced? That was my

2 evidence that it was open source as to what it was used

3 for. That's my reference.

4 MR. MENDEL: Gotcha. Thank you.

5 THE WITNESS: You're welcome.

6 MR. DEJARNETTE: When you get to a good

7 stopping point, can we take a break?

8 MR. MITCHELL: Yeah. Let's take a break

9 now.

10 THE VIDEOGRAPHER: Going off the record.

11 The time is now 2:44. This ends Disc Number 2.

12 (A brief recess was taken.)

13 THE VIDEOGRAPHER: This begins Disc

14 Number 3. We are back on the record. The time is now

15 2:59.

16 BY MR. MITCHELL:

17 Q During the break, did you have any

18 substantive conversations with the staff about the

19 case?

20 A No.

21 Q So we were talking before the break about

22 sort of April into May. Was management -- did

23 management continue to meet with the board and talk

24 about the idea?

25 A Yes.

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1 Q Okay. There was a meeting, like, in the

2 first week of May, and then a meeting sort of a few

3 days before the -- at least according to the -- the way

4 the documents seem to be, there's a meeting in the

5 beginning of May, and then a meeting a couple of days

6 before the public announcement. Does that jog your

7 memory?

8 A No.

9 Q Okay. I'm sorry. Because you remember

10 something different or because you just don't remember

11 the detail?

12 A I just don't remember.

13 Q That's fine. So I'm going to give you

14 what's already been marked as 17A.

15 A Okay.

16 Q This is a May 4th e-mail from Ted

17 Livingston to the board that says, "Kik board

18 materials," with the Bates number KIK_00106784 to 6835.

19 Do you recognize that document?

20 A Not offhand, but I remember we had a

21 board -- I guess I obviously was in this meeting. I

22 attended every one, so --

23 Q Okay. Is the -- well, leaving aside the

24 e-mail, are the attachment -- is the -- the rest of the

25 document, are these the board slides for the --

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1 A Yes.

2 Q -- meeting on May 5th?

3 A It would be, yes.

4 Q Okay. I guess just trying to place us in

5 time, what was the situation at this point? What was

6 the -- where were you in the process?

7 A Well, this was, first of all, our standard

8 quarterly board meeting, which would be at the end

9 of -- which would be at the beginning of -- about a

10 month after the quarter end.

11 Q Sure.

12 A So in some cases, we needed specific

13 approvals for certain things, update on where we were

14 administratively. And then Ted would normally talk

15 about sort of the strategy and everything else and

16 where we were at. So -- and then I guess I had to get

17 approval.

18 So I guess at the time of the process, one

19 of the -- Cointree is already in here. So during the

20 month of April -- and I'm not even sure if it went back

21 as far as March. But at some point, we were introduced

22 to Cointree. So Cointree was familiar to Dany Fishel

23 in Tel Aviv. And as I had mentioned earlier, he

24 reached out to them. And what was interesting is

25 because they had built a cryptocurrency.

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1 And I honestly can't remember the name.
 2 That was integrating with -- they were looking at
 3 integrating with Telegram at the time. And they
 4 were -- you know, seem to be a really good group. And
 5 as I mentioned before, there were two key people for
 6 us. One was Tal, who was the product manager at Wix,
 7 and the other one was Lionet, who was sort of the
 8 security specialist there.
 9 Q Tal's name is T-a-l, right?
 10 A Yes.
 11 Q Can I turn you to -- have you turn to the
 12 page -- I'm sorry. I just want to walk through a
 13 couple of things that --
 14 A Yeah.
 15 Q -- seem to have gone on. Are you on a page
 16 that ends with 791?
 17 A Yes.
 18 Q At the top, it says, "Runway budget versus
 19 revised forecast"?
 20 A Yes.
 21 Q Okay. So did you present to the board
 22 about Kik's runway?
 23 A Yes.
 24 Q And does this -- does this slide reflect
 25 the runway as you understood it in May?

Page 179

1 A Yes. Yeah.
 2 Q Yes?
 3 A Yes.
 4 Q Okay. So at this point, Kik's runway, I
 5 guess there are three different scenarios. But at this
 6 point, Kik's runway would run out on November 1st,
 7 2017?
 8 A Yes.
 9 Q Or earlier if the company paid severance?
 10 A If the company -- the board was asking us,
 11 like, how does this always look in the worst-case
 12 scenario if we had to do severance. The reason for
 13 that is that there's a lot of costs that directors have
 14 liability for if they're not covered by the company.
 15 So you always manage to have X amount set aside and
 16 understand what that amount is. So no personnel
 17 liability falls through to the board --
 18 Q Sure.
 19 A -- with respect to severance cost and
 20 withholding taxes, et cetera.
 21 Q So was the October 9th, 2017, date a more
 22 reasonable date for the end of the runway at that
 23 point?
 24 A No, because we didn't feel at that point in
 25 time that we'd have to carry that out, like that we

Page 180

1 would shut down. We had -- as I said before, we had
 2 Tango that we could always go back to if we wanted to.
 3 And we were also looking at, you know, the
 4 cryptocurrency. And I'm not sure when discussions were
 5 over with Zynga. This is at the beginning of May. I
 6 think we were still discussing with Zynga various
 7 things.
 8 Q But you had to do one of those things
 9 before November to avoid running out of cash?
 10 A Not necessarily. There would have been
 11 other options along the way. We still had -- as I said
 12 earlier, we've had situations where we had forecasted
 13 two months of runway, and we extended it to eight. So
 14 that was not -- it was not a serious concern to me at
 15 that time.
 16 Q Why is it on a slide to the board?
 17 A Because the board always asks, like,
 18 where -- what's the worst-case scenario, especially
 19 Paul Holland, who is the one for cutting back expenses.
 20 So that was his mantra at the board.
 21 Q So the runway was important to him?
 22 A No. It was important to everybody. But it
 23 wasn't -- I don't think it was something that -- you
 24 know, we're sitting here in May, so you got May, June,
 25 July, August, September, October, November. You've got

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1 seven months.
 2 Q To do something?
 3 A Yes.
 4 Q Okay. And then there is a part that says
 5 "operational update" and then "product process." Do
 6 you remember, like, what that section -- there's a
 7 part --
 8 A The operational --
 9 Q Sorry. Just -- there's a part that says
 10 product process and a couple of slides. Until then,
 11 there's another slide that says cryptocurrency. So I
 12 just wanted to understand, what's the -- do you
 13 remember what the part that says product process, what
 14 that section was about?
 15 A Yes. This was Eran taking the board
 16 through how they were changing the product process,
 17 which was a lot more in depth than anything we had
 18 previously done at a product level. So he had this
 19 thing of constantly doing small bets, testing the small
 20 bets on the product, and then evaluating, you know,
 21 whether it would work and if we should move ahead with
 22 them, which is a lot more extensive than what we had
 23 done previously.
 24 Q And was this discussion about products
 25 within the Kik messaging app?

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1 A Yes.

2 Q Did the company adopt Mr. Ben-Ari's idea of
3 how to do product process?

4 A We started -- this is where some of the
5 conflict came up with Chris Best, too. And he left at
6 that point in time. So this was fairly extensive. And
7 there was a lot of -- we were converting the way we
8 were typically doing product process to now this more
9 sort of in-depth, you know, process that he outlines
10 here.

11 Q Okay. And then there's a part that says --
12 sorry. And Mr. Ben-Ari ran that section?

13 A Ben-Ari, yeah.

14 Q And then the "Cryptocurrency" header is on
15 the page that ends 799. Do you see that?

16 A Yes.

17 Q Did someone run this section?

18 A Yes. That would have been, like -- well,
19 the various elements. It depends on what part you're
20 looking at. There was a number of people involved in
21 this.

22 Q Who was involved in making the presentation
23 on the cryptocurrency?

24 A Ted would have made the presentation on the
25 cryptocurrency.

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1 Q And as you flip through it, does this --
2 these were the -- does this reflect sort of the
3 presentation you remember?

4 A Yes.

5 Q So on 801, there's key decisions. And then
6 at 802, there's Step 1. So as of this time, in around
7 May 4th -- or I guess the e-mail is May -- yeah,
8 May 4th, was the plan at this time to give 20 percent
9 of the 10 trillion Kin tokens to Kik?

10 A Yes, it appears that way.

11 Q Do you remember that?

12 A I can't remember this allocation. I
13 remember the end allocation we got to, but I can't
14 remember the iterations along the way.

15 Q You sort of imagined out my questions.

16 A Sorry.

17 Q In the end, the present -- in the end, Kik
18 was -- in the end, Kik kept 30 percent; is that right?

19 A Yes.

20 Q Do you remember discussions where it was
21 changing from 20 to 30?

22 A No, not really.

23 Q Okay. And then there's a 30 percent line
24 on that page. The 30 percent box that -- what was it,
25 part of the plan at this point to sell 30 percent of

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1 the tokens to investors?

2 A Yes.

3 Q And in the end, did that plan change?

4 A I don't think we -- yes, it did, because we
5 ended up selling ten percent initially. We put
6 60 percent in the foundation, and then we kept
7 30 percent for Kik.

8 Q Do you remember sort of discussions about
9 changing from 30 percent to investors to ten percent?

10 A No, I don't recall.

11 Q Do you remember how that change happened?

12 A No, I don't recall that.

13 Q The next page that's 803, there's Step 2,
14 build an economy inside Kik to give the cryptocurrency
15 value?

16 A Yes.

17 Q What was this step in the plan?

18 A This was the -- basically taking the Kik
19 Points ecosystem, pulling Kik Points out and inserting
20 the cryptocurrency, is effectively what we were doing.

21 Q And that would give the cryptocurrency
22 value?

23 A Yes.

24 Q What does that mean?

25 A That there would be value that people would

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1 acquire or earn Kin in order to have some sort of value
2 exchange. That's how we looked at an ecosystem or an
3 economy.

4 Q Okay. And then Step 3 is use Kik source
5 codes, et cetera. Do you see that section?

6 A Yes.

7 Q What was this step?

8 A This was to go to open source the Kik
9 Messenger fully.

10 Q And did Kik open source the Kik Messenger
11 before its own Kin tokens?

12 A No. No.

13 Q Do you remember any conversations about
14 changing -- changing the idea from open source to
15 something else?

16 A Yeah. The biggest thing was that Mike
17 Roberts, who is now -- excuse me. I believe his title
18 is CTO. He's been with the company almost since day
19 one. And he is in charge now with the messenger. And
20 he was writing -- rewriting the code base to put it to
21 open source.

22 I'm not like -- my analogy of it would be
23 that is that you're putting your work out there in the
24 open. And he wanted the code base cleaned up a bit
25 before he open sourced it. But that would be my

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1 assumption as to why it wasn't done at this point in
2 time.
3 **Q** You mean why it wasn't done at the sale --
4 before the sale?
5 **A** Yeah. Exactly.
6 **Q** If you keep flipping, there's a page that
7 ends in 806. It has the word "risks" at the top.
8 **A** Uh-huh.
9 **Q** So one of the risks says securities laws.
10 Was that -- did you have a discussion that one of the
11 risks of selling the Kin token was that it could be
12 seen as a security?
13 **A** With counsel, so it was privileged, at that
14 time.
15 **Q** Well, leaving aside the conversation --
16 leaving aside what was said to or from counsel, just in
17 general, did the board discuss --
18 **A** Yes.
19 **Q** -- that risk? Sorry. I have to ask you to
20 say the answer out loud.
21 **A** Yes.
22 **Q** And then on 810, there's a timeline. Do
23 you see that?
24 **A** Uh-huh.
25 **Q** What was this?

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1 **A** So we're talking about a meeting that was
2 when? Again, May 4th. Okay.
3 **Q** The e-mail is May 4th, the meeting may be
4 May 5th?
5 **A** Yeah. So it was fairly early on still in
6 the process. Reading from the document. Yeah. So the
7 only change was the product launch was done prior to
8 the token distribution event.
9 **Q** I'm sorry. I don't know what you mean.
10 **A** So you see at the end it says full product
11 launch or TBD?
12 **Q** Yeah?
13 **A** That was -- ended up being changed.
14 **Q** To what?
15 **A** To be done prior to the token distribution
16 event.
17 **Q** What was the full product launch you're
18 thinking of?
19 **A** The product launch was -- well, at that
20 time, there was still discussion on what the product
21 needed to have in order to launch.
22 **Q** Tell me about that.
23 **A** In what sense?
24 **Q** What was the discussion?
25 **A** Well, some of the discussion was with

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1 counsel, so it's privileged.
2 **Q** Okay. So --
3 **MR. MENDEL:** The other stuff.
4 **BY MR. MITCHELL:**
5 **Q** Yeah. Tell us about it.
6 **A** What other stuff? Oh, so part of the
7 discussion was that if you go back to -- I don't know.
8 Was it in this document? Yes. So if you go the long
9 and short process, this was, like, Eran had sort of a
10 very encumbered, like, long process, which was not
11 something that we traditionally did at Kik.
12 **Q** Uh-huh.
13 **A** And so there was -- we had a philosophy of
14 launch something, and then iterate as you move out.
15 Whereas he was a lot more sort of process driven. And
16 so that's where some of the conflict came with Eran
17 between the current developers we had and product
18 people, and where we were in the process for this part
19 here.
20 **BY MR. MITCHELL:**
21 **Q** Now, looking at the timeline.
22 **A** Yes.
23 **Q** Okay. So let me just walk through the
24 timeline for a second.
25 **A** Right.

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1 **Q** At this time, the time of this document,
2 the plan was to announce the token -- the plan to sell
3 the token at this May 24th Token Summit?
4 **A** Yes.
5 **Q** Okay. And the plan was that in June, there
6 would be a presale and a road show?
7 **A** Yes.
8 **Q** And the plan would be that in early July,
9 people were -- that's when people were aiming for the
10 token distribution event to be?
11 **A** Yeah. The only thing, if I recall
12 correctly, is that we had some discussions with presale
13 people already in May. So it didn't really -- it
14 wasn't like a strict bifurcated timeline, the way this
15 lays it out.
16 **Q** I'm sorry. Presale people are people who
17 would buy --
18 **A** Sophisticated investors that would buy the
19 security presale.
20 **Q** Right. Who would buy rights to token --
21 rights to tokens --
22 **A** Under the SAFT.
23 **Q** Sorry. Let me just -- the presale that
24 you're talking about is the idea of selling people
25 something which gives them rights to tokens in the

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1 future?
 2 A Exactly.
 3 Q Okay.
 4 A Which we referred to as a SAFT.
 5 Q And what's a road show?
 6 A There wasn't really much of a road show.
 7 We just had some meetings in New York. And I think
 8 Tanner and Ted went down to Los Angeles and met with
 9 some people.
 10 Q And, sorry, who did they meet with in Los
 11 Angeles?
 12 A I think Pantera and -- I forget the
 13 gentleman's name. Olaf. He has a company called --
 14 Q O-l-a-f?
 15 A Yes.
 16 Q Okay. As of the time of this document, was
 17 the plan that the sale to the public would happen in --
 18 at least the aiming was for early July?
 19 A Yes.
 20 Q Okay. Then you, I think, said something
 21 about -- there's words full product launch here. And
 22 you said that somehow, in some ways, the timeline we're
 23 seeing here differs from the timeline that actually
 24 happened.
 25 A Yes.

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1 Q How does it differ?
 2 A Because the -- we had the -- we went to
 3 what we called an MVP. As I mentioned earlier, the
 4 struggle between Eran and the rest of the product team,
 5 we wanted to come out with a minimum product launch to
 6 get out there and to have the product tested out there
 7 in the open, that people would understand and start to
 8 use the product, and then iterate from there.
 9 There were a lot of technical challenges
 10 with the product that we need to test out in the
 11 marketplace. And then there were also -- from a
 12 business standpoint, we wanted to be out earlier than
 13 probably it would have taken him to go through this
 14 long process he discussed.
 15 So what happened then also is we decided
 16 that we would only do the product -- we would only do
 17 the TDE after we did the full product launch.
 18 Q And is that what happened?
 19 A Yes.
 20 MR. MURTHA: You mentioned from a business
 21 perspective, you wanted to have the token sale take
 22 place sooner than Eran had planned. Why? What was the
 23 business perspective?
 24 THE WITNESS: Not the product launch as
 25 much as the product getting out there. It was like any

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1 business. The first guy that's out there normally has
 2 an advantage over his competitors. And so we were one
 3 of the first ones that was launching a cryptocurrency
 4 inside a big application, and so we wanted to be the
 5 first ones to do that.
 6 BY MR. MITCHELL:
 7 Q Earlier, I think we had discussed a
 8 product. We were talking about the March time frame.
 9 We're talking about a market for the product. And I
 10 think we were -- at that time, we were just talking
 11 about a product -- where the product was selling
 12 tokens. Do you know what I'm talking about?
 13 A No. Can you just clarify? I'm not sure?
 14 Q Earlier, I think we talked about sort of
 15 the market for a product, the idea of what CoinFund was
 16 doing or was there -- that was that list of tokens.
 17 And at that time, I think we were using the word
 18 "product" to describe what, I guess, you're calling the
 19 cryptocurrency with the digital asset.
 20 A Yes.
 21 Q That was right?
 22 A Yes.
 23 Q Okay. Currently, when we're talking about
 24 the product here in this document, when you say there
 25 was a full product launch, are you limiting it to

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1 just -- that, yes, that's -- the token itself is the
 2 product?
 3 A No.
 4 Q Okay. So now, at this point, I just want
 5 to use -- I know we're using the same word, but I just
 6 want to make sure I understand it. When you say there
 7 was a full product launch, what do you mean?
 8 A I mean that the product had value within
 9 the Kik economy.
 10 Q Okay. And so what was the -- what was the
 11 product when the token distribution event occurred?
 12 A The product was a status-based element
 13 where people had unlocked -- based on the amount of
 14 crypto they owned, they could unlock various levels of
 15 stickers, which were a big part of, like, our user
 16 base.
 17 Q Okay. Were they a big part of the -- for
 18 the people who bought the Kin tokens in the token
 19 distribution event?
 20 A I'm not sure. I have no way to correlate
 21 that.
 22 Q Did you ever try?
 23 A I wasn't in the marketing area, so --
 24 Q Do you know if anyone in the marketing area
 25 did?

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1 A I think they looked at it, but I'm not -- I
 2 can't recall what work they did on it.
 3 Q Okay. And I think earlier you said there
 4 were some kinds of discussions that led to the timeline
 5 that we're looking at change that the full product
 6 launch happened before the TDE; is that right?
 7 A Yes. Yes.
 8 Q Again, don't say something to me that a
 9 lawyer said to you, but tell me about that
 10 conversation. What led to that change?
 11 A That was that we needed to have utility in
 12 the product prior to the launch.
 13 Q Okay. Leaving aside lawyers, did -- was
 14 that because Eran Ben-Ari wanted that?
 15 A No, because Eran at that time wanted far
 16 more. But that would have delayed getting out there to
 17 market a lot more. So we wanted to be early from a
 18 product and technology standpoint. The main reason is
 19 cryptocurrency was still relatively new. And a lot of
 20 people had questions about the technology itself. So
 21 we couldn't attract people to start -- you know, to
 22 grow the ecosystem until we had proof that the
 23 technology worked and we could integrate it within the
 24 product.
 25 Q You're just talking, like, partners who

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1 would join the ecosystem?
 2 A Exactly.
 3 Q Other companies?
 4 A Yes.
 5 Q Okay. What was -- why did you want -- I
 6 guess what was the -- I'm sorry. I'm trying to find
 7 the right way to ask the question.
 8 A Okay.
 9 Q Why did Kik want -- I think you just said
 10 that you wanted there to be utility before the TDE; is
 11 that right?
 12 So the question is: Why? Why did Kik want
 13 that?
 14 I'm asking it that way to make sure that
 15 you think through the answer. And just if you need to
 16 talk to him before.
 17 THE WITNESS: I'd like to talk to you
 18 before, because a lot of this was quite intertwined.
 19 MR. MITCHELL: Yeah. Let's go off the
 20 record.
 21 THE VIDEOGRAPHER: Going off the record.
 22 The time is now 3:21.
 23 (A brief recess was taken.)
 24 THE VIDEOGRAPHER: We are back on the
 25 record. The time on the video monitor is 3:27 p.m.

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1 BY MR. MITCHELL:
 2 Q Okay. Have you had any -- did you have any
 3 substantive conversations about the case with the staff
 4 on the break?
 5 A No.
 6 Q Okay.
 7 MR. MITCHELL: Can you just read the last
 8 question back just so then he can --
 9 (Record read.)
 10 THE WITNESS: I think there were three --
 11 the question -- the way I understood the question was,
 12 effectively, why did we want to launch at that point in
 13 time. And as I already mentioned, I said one was the
 14 technology. We had to prove that the technology
 15 integrated. Number two was for business reasons.
 16 Being first in the market was a big advantage.
 17 And the third part was on the MVP. And
 18 that was quite a convoluted process with a lot of
 19 different people, including counsel.
 20 BY MR. MITCHELL:
 21 Q Okay. So of the three things you just
 22 said, the first two are sort of reasons why Kik wanted
 23 to move along and get the token into the market --
 24 A Yes.
 25 Q -- as quickly as it could?

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1 A Yes.
 2 Q Okay. The third one, I think, is about the
 3 MVP. And I guess the part I'm trying to understand
 4 is -- the timeline in Exhibit 17A I think you said
 5 shows a full product launch after the TDE. And you
 6 said that when it actually happened, the product launch
 7 was before the TDE.
 8 A Yes.
 9 Q Okay. So my question is: Why was the
 10 product launch moved before the TDE?
 11 A And that was through discussions. That
 12 was -- the discussion on the product launch was heavily
 13 involved with a number of different people, including
 14 counsel.
 15 Q Okay. So you're saying there was, like,
 16 one meeting with a lot of people including counsel?
 17 A No. No. It was numerous meetings.
 18 Q Okay. And every one of those meetings
 19 included a lawyer in it?
 20 A I was not involved in a lot of those
 21 meetings. They were directly with counsel and the
 22 product people.
 23 Q Okay. Was there a --
 24 MR. MENDEL: Can I try?
 25 MR. MITCHELL: Please.

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1 MR. SCHLEGELMILCH: Is there any
2 non-privileged meeting that you're able to share with
3 us today?

4 THE WITNESS: Not that I recall. What
5 was -- at that time, we had a number of different
6 things going on. And as a staff, we were stretched.
7 So I was concerned about my involvement in a process
8 that was pretty much more so the product people and
9 counsel. And the same thing with the communications
10 side.

11 So I pulled myself, extracted myself from
12 that, so I wasn't a bottleneck. So a lot of those
13 conversations were not involving me at all. I just
14 knew that from a business standpoint, we had to get the
15 product out early. There was already another
16 competitor that had a product called Bat Token, which
17 was similar in nature.

18 It's totally different in terms of how it
19 works, but it was an advertising-based initiative,
20 also. So it wasn't -- it was a time frame.

21 MR. MENDEL: But I think focusing just
22 on -- what I think Brent is focused on is the
23 sequencing, not necessarily how quickly or slowly the
24 product came out, but the sequencing, sort of the
25 pre-token distribution of that. Is there anything

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1 Q But were there people -- who was running
2 the product group at that point?

3 A It was a combination of Eran, Mike, and
4 Christine was involved in it, and Ted, and -- well,
5 Eileen, from counsel standpoint, which was privileged,
6 as you said.

7 Q Was Eileen working for you in May?

8 A Yes -- oh, sorry. This is -- you're
9 talking --

10 Q Yeah. I'm talking about --

11 A You're discussing about why the product
12 launch happened afterwards.

13 Q Oh, that conversation happened after?

14 A Right.

15 Q Got it.

16 A Okay.

17 Q Okay. Leaving aside the lawyer, did any of
18 those other people -- did any of those other people
19 champion the idea of, "Hey, the product we really need
20 is status and the access to stickers"?

21 A Ted was probably the biggest driver of
22 product at the time.

23 Q Right. And so he -- did he really like the
24 idea of status and stickers?

25 A Yeah. Yes.

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1 that's not privileged that you can share with us that
2 you were privy to with the decision-making for the
3 sequencing?

4 THE WITNESS: From the sequencing, we
5 understood -- I understood at the time that we had to
6 have utility in the product before we did the token
7 distribution event.

8 MR. MENDEL: Okay. And what's -- is there
9 any nonprivileged basis for that understanding?

10 THE WITNESS: Not that I can recall,
11 because I wasn't involved in that process.

12 MR. SCHLEGELMILCH: Okay.

13 BY MR. MITCHELL:

14 Q Was there a business reason that you needed
15 to have utility?

16 A Yes. So there was value to the product.

17 Q Okay. So who within Kik sort of was
18 pushing that idea that there needed to be a --

19 A It was a conversation. It would have been
20 between the product people and Ted. Ted sort of --
21 that's his area and domain, is product. I learned a
22 long time ago not to get involved as a financial person
23 with the product discussion.

24 Q Sure.

25 A So I wasn't involved in that.

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1 Q Tell me about that. What he did he say?

2 A He said that in this economy, status is a
3 really big part. And these were also findings that we
4 had from WeChat when they talked about their market and
5 how their core developed in China. And there was
6 actually, I think, also a ONE token event that actually
7 went purely out on status.

8 So that was all their product was. It's a
9 big area. The age I'm in, I can't really relate to it,
10 but that is a big function in that group. The same
11 with stickers. Stickers, if done right, and as a
12 product good fit between the sticker and the user --
13 like I use certain stickers, but others I don't
14 necessarily use. Some have an appeal. And Line, as an
15 example, has sales of \$250 million a year in stickers.

16 Q And Line is a messaging app?

17 A Yes.

18 Q And the discussion -- what you were just
19 describing about the users, were you talking about
20 users of the Kik -- users of the Kik messaging app?

21 A Users of the Kik messaging app, yes.

22 Q Yeah. And the group that likes status, was
23 that -- that's the people who use the Kik messaging
24 app?

25 A Similar -- yes, similar group. I don't

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1 know what the overlap would be.

2 **Q** Okay. And so the people who were going
3 to -- who you thought would buy Kin tokens, what was
4 their thoughts on getting status inside the Kik
5 messaging app?

6 **A** I think people bought currency for where it
7 was going to evolve to. They understood what the
8 premise was. They had been involved with Kik Points
9 before. And they would be buying it for something
10 happening also down the road, not necessarily what was
11 just at the launch at that time.

12 **Q** So you think the people who bought Kin
13 tokens were the people who had used Kik Points inside
14 of the Kik messaging app?

15 **A** Some of them, but I have no way to
16 correlate those.

17 **Q** Do you have any idea what percentage of
18 them did?

19 **A** No idea.

20 **Q** Okay. So do you think people bought Kin
21 tokens to get access to stickers and status?

22 **A** Yes.

23 **MR. MENDEL:** What's your factual basis for
24 that belief?

25 **THE WITNESS:** Just in terms of, like, if

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1 sticker packs?

2 **THE WITNESS:** Not the most of the financial
3 type investors that bought it. But there were some,
4 like Betaworks, that were buying it on behalf of
5 clients to incentivize users to integrate, let's say,
6 with or speak to a bot from other brands.

7 **BY MR. MITCHELL:**

8 **Q** Sorry. Did Betaworks buy so it could get
9 access to status and stickers?

10 **A** Betaworks bought because the product as a
11 currency is an incentive to give value to people to
12 integrate with their app.

13 **Q** So you think they bought it to give to the
14 other people in exchange for something else?

15 **A** Yes. So the model would be -- let's say
16 you have a Coke bot and you want people to interchange
17 or get a sticker, you could acquire, you know,
18 cryptocurrency to basically go buy those stickers. And
19 the access -- the aspect -- this is again to this point
20 about it's not Kik grabbing that user's information and
21 selling it to Coke.

22 **Coke** is sitting there with the user and
23 saying if you're willing to talk to me and you
24 integrate with me and you use my stickers, let's say,
25 and send them, I will pay you for that. Okay? And

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1 you -- like I said, if you hit it right, you have
2 ecosystems that -- that's where they make all their
3 money. We couldn't -- we had a lot of brands that we
4 talked to, like you could have brand stickers. There
5 was a lot of integration with brands that have produced
6 stickers.

7 So the thing was when -- once the ecosystem
8 was going to be developed and you had the technology
9 laid out and everything else, that's the point in time
10 you could get probably larger brands involved.

11 **MR. MENDEL:** Let's focus just on the people
12 who purchased in the presale portion.

13 **THE WITNESS:** The presale?

14 **MR. MENDEL:** Yes, sir.

15 **THE WITNESS:** Okay.

16 **MR. SCHLEGELMILCH:** Do you know -- these
17 are the higher net worth individuals.

18 **THE WITNESS:** Yeah, they're -- they were.
19 I'm sorry.

20 **MR. MENDEL:** My question, which maybe
21 you've already figured out --

22 **THE WITNESS:** Yeah.

23 **MR. SCHLEGELMILCH:** -- I'm not too sneaky,
24 is: Do you know whether any of those purchasers were
25 interested in the sticker packs, the status-based

Page 205

1 that's where the cryptocurrency comes in. And those
2 are the types of models that we had with Kik Points,
3 and those were the same model that we would use here.

4 **MR. MURTHA:** Did Kik ever market or
5 advertise stickers to purchasers of Kin before the ICO?

6 **THE WITNESS:** Did Kik ever advertise?

7 **BY MR. MITCHELL:**

8 **Q** Let me flip the question. The people who
9 bought in the token distribution event --

10 **A** Yes.

11 **Q** -- how did they learn that they would get
12 access to status and stickers?

13 **A** Through the community channels is my
14 understanding.

15 **Q** From what?

16 **A** My understanding is from the marketing
17 people, they handled how that conversation, that
18 messaging went out there.

19 **Q** Did they tell you that?

20 **A** I recall hearing about it in the -- in one
21 of the meetings, but that's the only reference I had.
22 I know there was discussion about, you know,
23 advertising and that sort of thing in order -- but that
24 was -- again, we're getting now into privileged
25 information, but what we could and couldn't do.

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1 Q Sure. Before the token distribution event,
2 did anyone at Kik tell you, "Yes, we told the public
3 about that, that if they bought tokens, they'd get
4 status and access to stickers"?

5 A It would have been told somewhere, but I
6 can't recall where it was.

7 Q Okay. So you think you heard that, but you
8 don't recall?

9 A Yeah.

10 Q Do you remember who told you?

11 A No.

12 Q Do you remember what channel they used?

13 A No.

14 Q Do you remember what they said what they
15 told the public?

16 A No.

17 MR. MENDEL: Do you know whether that
18 communication happened pre-token distribution event or
19 post-token distribution event?

20 THE WITNESS: No, I don't recall that
21 either.

22 BY MR. MITCHELL:

23 Q Okay. One last page on this, 1815, the
24 document we're looking at as Exhibit 15A.

25 Do you see the page that says "sale

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1 settled on the SAFT idea yet?

2 A No. This is May. I can't recall when the
3 discussion exactly came up on the SAFTs.

4 Q So then -- sorry. There's meeting -- early
5 meeting in May. Do you remember sort of what happened
6 after that?

7 A Let's think about it. I know we had a
8 Token Summit meeting in Tel Aviv, but I can't remember
9 the exact dates. And I can't recall the exact dates,
10 but it was our meeting -- a meeting where we had
11 CoinFund, Cointree, Kik employees. It must have been
12 about 17 people at the meeting. It was in Tel Aviv.
13 And that's where we -- they hammered out the product
14 and those types of things.

15 Q The product meaning this minimum viable
16 product?

17 A That was one of the things, like one of the
18 elements of that meeting.

19 Q And do you remember whether it was before
20 or after the public announcement?

21 A I think it was before the public
22 announcement, but I can't really recall.

23 Q Okay. And how did they hammer out the --
24 I'm sorry. Can I just go back earlier? Earlier, you
25 talked -- you were talking about the minimum viable

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1 structure"?

2 A Uh-huh.

3 Q What is this chart?

4 A This is basically saying how we would get
5 to the first 50 million. Those were to the presale
6 investors. And then there was discount factor, just
7 like you have with the product for those people that
8 would purchase coin earlier in the process once we
9 hit -- once we went to the TDE.

10 Q So stepping back sort of one level broader.

11 A Yeah.

12 Q Is this chart -- is this the plan sale
13 structure as of the time of this meeting?

14 A Yes.

15 Q Okay, and was the plan to sell ten percent
16 of the float?

17 A Yes.

18 Q And it was to sell tokens in tranches?

19 A Yes.

20 Q I guess with discounts for the early
21 tranches?

22 A Right. So up to the 50 million was for the
23 presale investors.

24 Q Okay. I don't see any reference to SAFTs
25 at this point. At this point in time, had Kik sort of

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1 product. You said that you understood there were
2 conversations between the product folks and lawyers.
3 What lawyers?

4 A Mostly Cooley's and our internal counsel.

5 Q Okay. And who at Cooley?

6 A There was Nancy and Karen. And that's
7 about -- oh, Marco.

8 Q Marco Santori?

9 A Yeah.

10 Q Nancy Wojtas?

11 A Yeah. And then Josh. What's Josh's last
12 name, do you recall?

13 Q Karen Ubell?

14 A Karen Ubell.

15 Q Okay. And Josh something?

16 A And Josh worked with Marco, but I can't
17 remember what his last name was offhand.

18 Q Okay. Any lawyers other than outside
19 Cooley?

20 A No. Later on, Eileen. And then, later on,
21 also Scott McKey at Blakes. And then we also spoke to
22 another lawyer on Canadian law with banking. So --

23 Q So take me back to Tel Aviv. At this
24 meeting, were there discussions about sort of what to
25 do about -- what -- about this idea of creating an MVP?

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1 A I don't recall if the discussions were then
2 as much as they were sort of in July.

3 Q Okay. So let me keep you in time. During
4 this Tel Aviv meeting, what else -- what were the major
5 issues being discussed?

6 A There was discussion about the economics,
7 like how do the economics work and transaction and
8 everything else, like what's the velocity we felt we
9 need and how would that affect price of the currency
10 and those types of elements.

11 Q What do you mean velocity?

12 A So velocity is how much earn and spend you
13 have in the ecosystem. So that's probably I'd say the
14 most relevant piece as to whether this would be
15 successful or not.

16 Q How?

17 A Because if you don't have earn and spend,
18 you end up like a situation where bitcoin -- this is a
19 transactional currency, which means you have to have
20 people trading it. You don't want to have people like
21 in bitcoin, where they grab the currency and they hold
22 on to it. That's not what the purpose of this is. So
23 that's why we almost -- there's a balance there with
24 creating a deflationary economy almost in order to
25 entice people to sell or to purchase the product in the

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1 A The other factor would be, yes, as I
2 described earlier, is that you don't want -- you want
3 to have presale investors, which we did, that supported
4 the product and understood the product. And what we
5 were trying to achieve in not coming out and, you know,
6 having a certain uplift and then dropping a bunch of
7 currency, that was really critical for us.

8 Q And what would supporting the project to
9 those folks look like?

10 A That they understood that we were sort of
11 trying to decentralize a digital ecosystem that was
12 held right now by very -- like Google and Facebook and
13 that sort of thing. In fact, Dan -- Pantera phoned us
14 up when Facebook went through that whole thing about
15 all the issues they were having about privacy and how
16 they were using people's information and everything.
17 And he said, like, you know, Facebook just threw you a
18 big present, because that's exactly what you're talking
19 about.

20 Q Is that Dan Morehead from Pantera?

21 A Yes. Yeah. So he was very supportive of
22 the project. He understood it. And he was like that
23 was a big coup for us in terms of the market, in terms
24 of how we were looking at our business.

25 Q Right. And so did you expect Pantera to

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1 ecosystem.

2 So that's what they -- the 60 percent is
3 then used as a bit of a -- it's almost like, I look at
4 it -- equivalency would be the foundation, the
5 60 percent is almost like a central bank, right.

6 Q That continues to add tokens to the float?

7 A Right. But it has to be done correctly.
8 If you get that wrong, that's where there's a -- you
9 can just kill the whole ecosystem, because you put too
10 much currency in, price drops, right? And by the same
11 token, if you have too little in it, you've got huge
12 volatility in the ecosystem. And that's not good.

13 Q So setting up just the parameters of that
14 and how it's going to work, that seems crucial to the
15 success?

16 A Yes. Yes.

17 Q And is that -- are those parameters -- are
18 those the kinds of things that get expressed into the
19 Kin -- expressed by the Kin Rewards Engine?

20 A Yes.

21 Q And by anything else or is it all in the
22 Kin Rewards Engine?

23 A It's mostly in the Kin Rewards Engine.

24 Q Right. Anything else that you can think
25 of?

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1 start offering to let people buy and sell products,
2 like it was going to start selling products and taking
3 in Kin?

4 A No. Pantera was a presale investor. So
5 what I said was going back, you had asked me about,
6 like, who was investing and that sort of thing.

7 Q Right.

8 A And so Pantera was a presale investor, so
9 it was really critical for us to have presale investors
10 that bought into and believe the project and weren't in
11 for a quick pump-and-dump type scenario. Or otherwise,
12 it would kill --

13 Q Right. When you're saying that you wanted
14 them to have bought in, did you expect Pantera to start
15 offering goods and services?

16 A No. They were an investor. If you go to
17 the white paper, there's a definition of all the
18 different people. They are they capitalists, right?
19 There's the brands in the ecosystem. There's the
20 users. There's those three or four categories that we
21 defined in the ecosystem. You needed all of them in
22 order to run.

23 Q So when you're saying that you -- it was
24 important that Pantera bought into the idea, do you
25 mean that it was important that Pantera held Kin tokens

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1 for the long term?

2 A I should have probably not used the word
3 "bought," because it implies a certain action as much
4 as they were in support of and understood what our
5 project was and the long-term nature in what we were
6 looking at doing.

7 Q And the way Pantera would be supportive was
8 to hold the Kin tokens for the long term?

9 A For a period of time, yes. I mean, we had
10 no restrictions on them. We had vesting on all of the
11 presale investors in order to prevent that sort of
12 scenario happening. But -- so that was our goal there.

13 MR. MENDEL: What did you do to make sure
14 that the public sale participants were going to be
15 participants in this ecosystem that you're describing?

16 THE WITNESS: Well, first of all, we wanted
17 a broad base, like a lot of these -- the TDs that we
18 saw in the past. They were, like, set groups getting a
19 large percentage of the currency. And the price would
20 drive up and the ecosystem would basically fail. And
21 in a lot of cases, it wasn't even developed. In our
22 case, we wanted to have as broad of distribution as
23 possible.

24 And we also wanted to KYC people which we
25 thought would hold back the speculative nature of the

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1 I understood that was through watching -- was it the --
2 there's a Netflix -- I don't know if you've seen it,
3 but there's a Netflix documentary. And Fred Wilson is
4 in it with the -- and they're talking to the state
5 legislator about cryptocurrency and everything else.
6 And that's when the legislator put in the requirement
7 that in order to sell cryptocurrency in New York, you
8 had to have a bit license.

9 And that fellow then left being a
10 legislator, and he's a consultant now to get people to
11 get their crypto licenses. So -- but that was a big
12 problem for us because we couldn't even, like sell, to
13 our employees, we couldn't purchase in New York.

14 MR. MURTHA: Were any of the SAFT
15 purchasers located in New York?

16 THE WITNESS: I think SAFT was different
17 because it was a security at the time and not a
18 currency. But I'd have to go back and take a look.

19 MR. MENDEL: What about the KYC process as
20 to holding back the speculative nature of the presale?

21 THE WITNESS: There wasn't a specific thing
22 that we could do, other than if we had -- we broadened
23 the user base, we had less risks with volatility on the
24 speculation. A side part of it was, like, if one
25 person had, like, 500 coins and sold it, it wasn't

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1 people. And then also that -- so the KYC was one
2 aspect of it. And then we had no limits on the bottom,
3 like anybody could buy. If they wanted to buy two or
4 three coins, they could buy two or three coins. So it
5 was getting as broad a distribution as possible.

6 MR. MENDEL: But there was no inquiry, was
7 there, to, say, individual investor A, like, "Hey, you
8 intend to use this coin?"

9 THE WITNESS: No, we didn't. Couldn't
10 really do that with 17,000 people.

11 MR. MENDEL: Well, it wasn't 17,000 people.
12 It's 10,000 people, right?

13 THE WITNESS: The preregistration was
14 17,000, because that included people in China, in
15 Canada. And we restricted people in New York. So
16 there were a lot of people that -- and then there were
17 any ones that were -- not a lot, that we ran through
18 OFAC that didn't qualify.

19 So we went through all of that screening
20 process in order to satisfy, you know, more so the
21 currency and AML issues at the time.

22 MR. MURTHA: Okay. Why did you restrict
23 people in New York?

24 THE WITNESS: Because you needed a bit
25 license to sell to New York. I didn't -- the only way

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1 going to be a problem. But if you had a high
2 concentration of people in a certain area, that would
3 be a problem, right?

4 We had some larger buyers in the TDE. I
5 don't know if you recall the process we ran. We had
6 everybody register, right? And then what we did is
7 we -- based on that registration, we divided the amount
8 of coin that was available by those number of users.
9 So everybody could buy in the initial tranche that
10 amount of currency. So I think the average was
11 probably like -- I can't really recall, but it's
12 probably around 2700 or something.

13 And then, after the 24-hour period, if
14 there was anything available, you could end up buying a
15 larger amount. And in some cases, like I think you
16 could have brands buy in, you could have other people
17 buying in that were using it for other purposes. I'm
18 not sure if Beta -- I don't know who bought it that
19 second tranche, but Betaworks might have been one of
20 them, but I can't really recall.

21 MR. MENDEL: Is there anything else
22 specifically part of the KYC process?

23 THE WITNESS: No. KYC was mainly done
24 for -- I mean, the main purpose of KYC was to
25 discourage the AML basically, because we see -- we saw

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1 that as a really high perceived risk at the time.
 2 There was one -- we had one fellow that was just a
 3 local businessman in Toronto or in Waterloo that
 4 started OpenText.
 5 I don't know if you know that company.
 6 It's a large international success story. And he's
 7 quite well connected with the government side. And
 8 that was his concern. He says, you know, "You've got
 9 to be really careful here, because you're running a
 10 currency. And if you get into any AML issues, it's a
 11 major issue for you." So that was our view of the
 12 scenario at the time.

13 BY MR. MITCHELL:

14 Q We're still in Tel Aviv. Anything else
 15 about that meeting? Any other major issues that people
 16 were hashing out working through?

17 A No. What happened in Tel Aviv was -- it
 18 was the first time we met the Cointree people. So
 19 those discussions, we were quite impressed, as I said,
 20 with Tal and Lionet. And we needed that piece of the
 21 equation. And so that's when the discussions started
 22 to purchase Cointree.

23 Q And, sorry, Lionet dealt with security
 24 issues?

25 A Lionet, yes. Security in the sense of,

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1 meeting before that public announcement? Do you
 2 remember whether it had one?

3 A I can't recall, but I would imagine likely
 4 it did. There was a lot going on.

5 Q I'm going to hand you -- again, this is
 6 what lawyers call trying to refresh your recollection.

7 A Okay.

8 Q 18A is a board -- it says on the front,
 9 "Board Call," May 23rd. So May 23rd is before the
 10 public announcement; is that right?

11 A Yes.

12 Q And this has a Bates number KIK_00106868 to
 13 898. Is this board slides for a May 23rd call?

14 A I guess so, yes.

15 Q Did you have any role in drafting these
 16 slides?

17 A I can't recall drafting it. I'm not very
 18 good with graphics, so my idea is that I didn't draft
 19 them. But either Ted did or somebody did.

20 Q Sure. Can you look? There's a page that
 21 says update on crypto, and it has a Bates number that
 22 ends in 871. It's, like, the fourth page.

23 A Yes.

24 Q And it says sit-down, May 18th, 2017. Do
 25 you know what sit-down --

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1 like, physical security.

2 Q Yeah. Exactly. Not like securities and
 3 exchange, right?

4 A No.

5 Q So why was security important?

6 A Well, in a lot of these cases, they're -- I
 7 don't know if you've read about them, but there's been
 8 major hacks during the token distribution event. And
 9 that was a major liability issue. If you read in the
 10 documents, Fred's reason for not wanting to join the
 11 foundation port was because he was concerned about the
 12 liability surrounding a major hack.

13 Q Sure.

14 A And we went through that whole process
 15 cleanly.

16 Q So then, after the Tel Aviv, but before the
 17 announcement, was there another board meeting right
 18 before the announcement?

19 A There were other -- there would have been,
 20 at the beginning of August, our standard board meeting.

21 Q Before the May 25th -- or I'm sorry. When
 22 was the Token Summit, May?

23 A I don't -- like I was saying, I'm not
 24 exactly sure of the dates.

25 Q Did the board have another call or another

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1 A Yes. So sit-down is where we have -- we
 2 have them weekly, actually. And it's where the whole
 3 company gets together. And there's an update for
 4 everybody in the company. And it's sort of taken
 5 different forms over the course of Kik's life.

6 But everybody is on from Tel Aviv to New
 7 York. And we video. And there's -- normally, Ted
 8 gives an update, or any particular team that has
 9 something relevant gives an update.

10 Q And it's anyone at the company?

11 A Yes.

12 Q And are there people who attend who don't
 13 work for --

14 A No.

15 Q Can you attend if you aren't working for
 16 Kik?

17 A No, not unless you're a consultant
 18 specifically working and you get invited. But
 19 otherwise, no.

20 Q Okay. So I'm just looking at that date,
 21 sit-down, May 18th.

22 A Yes.

23 Q So roughly a week before the announcement,
 24 do you remember, did Ted run a sit-down --

25 A Yes.

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1 Q -- where he talked about this?
 2 A I guess so, yeah.
 3 Q Okay. So, I mean, again, I'm just looking
 4 at -- the next page says, "Where are we," and
 5 there's a -- do you see the page, "Where are we," at
 6 the top?
 7 A Yes.
 8 Q So down at the bottom, there's text that
 9 just says, "I'm doing a fireside chat at Token Summit
 10 at NYC. And then we're going to move pretty quickly
 11 into a road show followed by the actual token sale
 12 likely in July."
 13 A Yes.
 14 Q Do you see that?
 15 A Yes.
 16 Q So was that the plan at the time that the
 17 token sale at least was aimed for July?
 18 A Yes. And I think that's consistent with
 19 the other document you showed me earlier.
 20 Q Okay. Do you remember any reaction at the
 21 sit-down?
 22 A I think people were excited. I mean,
 23 again, a lot of the staff didn't really understand, you
 24 know, cryptocurrency. I would say they were probably
 25 more informed than the board in the sense of

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1 understanding, you know -- like I said, Tanner had
 2 studied it up at a school.
 3 So -- but other than that, I think it was
 4 an education for everybody to understand where we were
 5 at as a company and that everybody was aligned.
 6 Q And was everybody aligned?
 7 A Yes.
 8 Q Okay. Can you go to -- there's a page that
 9 ends in 878. It says, "The Vision."
 10 A Yes.
 11 Q The text underneath it, I assume that -- I
 12 assume that for the sit-down -- well, looks like the
 13 board is sent the slide and text underneath. Do you
 14 remember at this board -- at this sit-down, I assume
 15 it's just -- people had just shown the slide; is
 16 that --
 17 A No. And then Ted gives the -- Ted would
 18 give the discussion here.
 19 Q The notes underneath are what Ted says?
 20 A Yes. Yes.
 21 Q So if you flip to page -- to Step 1,
 22 "Create a new cryptocurrency."
 23 A Yes.
 24 Q I guess what -- this is just a description
 25 that Kik was going to create a -- something -- the

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1 cryptocurrency called Kin?
 2 A Yes. I think this is the first time people
 3 saw the name.
 4 Q Then Step 2 says, "Give value to Kin."
 5 A Yes.
 6 Q Did Ted tell people that the second step
 7 was to give value to Kin, and that this would be
 8 accomplished by integrating Kin into Kik?
 9 A Yes.
 10 Q That's the Kik messaging app?
 11 A Yes.
 12 Q Was that true? Like is that something that
 13 Kik planned to do?
 14 A Yes. Yeah.
 15 Q Why?
 16 A Because in order to have value, it had to
 17 have some sort of -- in order to have the currency get
 18 some value, you had to have an element of exchange,
 19 like that I could exchange value just like a currency.
 20 Like I have a dollar, I can pay somebody for something.
 21 And we had to create that same value exchange within
 22 the Kik Messenger, just like we did with points.
 23 So we had already gone through and proven
 24 that. So now it was, okay, replacing it with a
 25 cryptocurrency that could go broader than just the Kik

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1 ecosystem.
 2 Q And then the last bullet, did Ted tell
 3 people that increased usage means increased demand
 4 which means increased value?
 5 A Yeah, he said that. I mean, my view of
 6 that is that it's -- again, getting back to the fact
 7 that it's quite complicated, like increased value over
 8 what time. Like for the currency, the best way for the
 9 currency to increase in value is that the ecosystem
 10 underlying supports it so that there's an increased
 11 level of exchange and value and things you can buy.
 12 And that drives up the price of the currency at the end
 13 of the day.
 14 Q Why?
 15 A Because there will be more demand for the
 16 currency.
 17 Q And because the total amount of currency is
 18 set?
 19 A The total amount of currency is set, but
 20 only at a longer period of time. Because we have this
 21 rewards engine, right, that we're trying to create this
 22 deflationary element to incentivize people to buy.
 23 It's sort of -- so I sort of always think of it as a
 24 bit of an aside. A story, my dad was in Austria in the
 25 war. He had currency, Austrian shillings. Okay?

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1 He earned them all summer long. And he
 2 heard the shilling was going to be devalued by
 3 80 percent. So he went out the next day and he bought
 4 X number of riding lessons. And this was just after
 5 the war. His dad got really upset with him because he
 6 said, "You're spending all of your money on that."
 7 But the currency then, he bought them at
 8 eight, four, five times the value. So it forced him
 9 into a mode of actually buying. And the same thing
 10 happens here. If there's a rewards -- rewards engine
 11 works properly, there should be a constant balance
 12 between the amount of currency going into the ecosystem
 13 to keep the ecosystem balance that it rolls -- it
 14 accelerates in a sort of -- it accelerates not from
 15 peaks and valleys and being very volatile, but just
 16 like a central bank uses currency to stabilize an
 17 economy. The same thing would happen here.
 18 That's why one of the key people that we
 19 wanted on the board was Bill Raduchel. Like Bill's
 20 comment to me was all the time, "Listen, I've got no
 21 problem when we get going of understanding all of the
 22 mechanics and everything else. Just the question is
 23 what are the incentives to get it going." Right? To
 24 get -- like, why are we going to get -- and that's
 25 where we had to create value and get brands and get

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1 everybody else into the ecosystem.
 2 Q So what -- so was Kik's -- so Kik's goal
 3 was to have increased -- usage means increased demand
 4 which means increased value for the Kin token?
 5 A Yes.
 6 Q But you didn't want it to spike and drop?
 7 A Exactly.
 8 Q The goal, using the Kin Rewards Engine, was
 9 to design a system where the value would go up but
 10 steadily or gradually?
 11 A Exactly.
 12 Q Okay.
 13 A And that's also what McKinsey was brought
 14 in for, was to help us with what are the different
 15 scenarios and how would we look at that.
 16 Q So Step 3 is the Kin Rewards Engine?
 17 A Yes. Now --
 18 Q At that time of the announcement, did -- at
 19 the time of the announcement, did Kik know how the Kin
 20 Rewards Engine would run exactly?
 21 A Not exactly. We understood what the
 22 parameters were to be around it, like we were -- we
 23 think -- talked about in the white paper a distribution
 24 of 20 percent a year. And -- but then, again, that's
 25 where you have to -- like that's why one of the

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1 recommendations from William Mougayar was, "Look, don't
 2 automate everything off the bat, because that's what
 3 happened to Dow.
 4 You have to understand the way the
 5 ecosystem works, and then start putting your algorithms
 6 in place." So what they're doing now, I think they've
 7 actually -- they just did an announcement, I think,
 8 where they had 40 developers join the ecosystem. And
 9 that was through an incentive of X amount of Kin. And
 10 I think that would be likely to come from the
 11 foundation.
 12 Q So the details of the Kin reward engine
 13 weren't complete even at the time of the public sale?
 14 A No. No.
 15 Q Had people decided like what the definition
 16 was -- you know, who could get rewards?
 17 A Yes. The aspect of how it would be
 18 allocated was discussed. And there was a technical
 19 white paper that had sort of all of those formulaic
 20 things in there and how it would be assigned. But
 21 basically, on a very simplistic basis, if a developer
 22 had ten transactions and the ecosystem overall had a
 23 thousand transactions in it, they would get that
 24 percentage of the rewards allocation from that day.
 25 Q Was the technical white paper published?

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1 A I'm not sure when it got published or if it
 2 was published. And then -- but -- so to get back to
 3 the rewards engine. It would be seen at the end of the
 4 day. It would be also an open source product. Like it
 5 would be -- like people would build and constantly
 6 iterate to the algorithm.
 7 Q Oh, so the people could just change the
 8 reward engine on their own?
 9 A Yeah, but it would be subject to, like, a
 10 community type -- it's a community-based. So it
 11 depends upon the whole community. I don't know how
 12 they would -- whether it would be on a voting structure
 13 or there would be consortium vendors of the foundation,
 14 but that's how it would be done.
 15 Q What -- who is going to get to make that
 16 decision?
 17 A Pardon. That would be the foundation.
 18 Q But who was going to -- who was in the --
 19 what you were saying the consortium where the -- who
 20 was going to --
 21 A There could be a number of large app
 22 players. Like we might -- you know, there might be --
 23 you could have, like -- I think they were talking to
 24 medium. They were talking about the five or six or
 25 seven different companies who have large user bases.

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1 MR. MENDEL: But at this point, it's just
2 hypothetical?
3 THE WITNESS: Yes.
4 BY MR. MITCHELL:
5 Q Can you switch to the page that's 883? It
6 says, "What this means for Kik." First line says,
7 "What this means for Kik." And it's Kik. Number one
8 is create Kin, and then there's a line that says raise
9 money, better terms.
10 A Uh-huh.
11 Q Do you see that?
12 A Yes.
13 Q So was that true?
14 A I guess for the presale investment, like it
15 was hard not having an ecosystem in place. And so the
16 presale investors bought into what we were trying to
17 achieve and what we were trying to drive. So that was
18 the first basis upon which we raised money, to build
19 out the -- to build out the product in the ecosystem.
20 Q Okay. So let me break that up. Kik raised
21 money in order to build out the ecosystem?
22 A To build out the product and to get to the
23 product. And then, eventually, you know, whether it
24 was going to develop its own applications or whatever,
25 that would also be part of it.

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1 Q I'm sorry. When you say "the product,"
2 what do you mean?
3 A There were other applications that Kik was
4 looking at. Like we had the Toronto office. And
5 that's what their goal was, to take a look at what sort
6 of products and how could they integrate with other
7 developers to launch.
8 Q Okay. Let me just bring you back to this
9 document.
10 A Yes.
11 Q Was one of the things that this means for
12 Kik, that Kik got to raise money on better terms?
13 A That was one element.
14 Q Okay. Then on -- go to 86. There's a
15 presale timeline. Was this Kik's plan as of, you know,
16 this board meeting or board call?
17 A I guess so. This is just to refresh myself
18 on what this was. Yes.
19 Q It was to sell \$50 million worth of tokens
20 to people?
21 A Yeah, on a presale.
22 Q And there was a road show that was part of
23 that?
24 A Yeah, they were -- yeah, I guess so. There
25 was -- I didn't attend any of the events, but --

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1 Q Well, this says New York and Toronto road
2 show. Do you know was there -- were there events in
3 New York and Toronto?
4 A I think there was some -- yeah, there were.
5 Like when you say events, some of them were events,
6 like a crypto conference Ted might have attended or
7 there might have been meetings.
8 Q Was one of the events that Mr. Livingston
9 attended as part of the road show the TechCrunch
10 Shenzhen show?
11 A I don't -- I can't recall if he actually
12 ended up going over to that.
13 Q Was there a plan at one point that he'd go?
14 A Yeah, there was a plan at one point, but
15 I'm not sure if he ended up going or not.
16 Q And was that --
17 A No, I don't think we did that whole -- I
18 know we went to San Francisco, and I know we were in
19 New York. I know we were at various meetings. But I
20 don't think he ended up -- I don't know. There was a
21 lot going on, so he might have flown out for a couple
22 of days and then back.
23 Q To Shenzhen?
24 A Yeah. And then he'd fly back, like go for
25 just one thing and then come back.

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1 Q Was the plan, though, that that was part of
2 the road show?
3 A Yeah, according to this.
4 Q Okay. And London Crypto Financing, is that
5 another event that was part of the road show?
6 A Yes, he must -- I think he attended a
7 meeting there in London.
8 Q And then I'm going to skip a couple of
9 redacted pages. And there's a page that says,
10 "Proposed product MVP." What was this? Do you see the
11 page that says proposed --
12 A Yes. Yeah. This gets back to what we
13 talked about earlier with the MVP and the status levels
14 and the use of stickers, premium stickers.
15 Q This is a description of the MVP that you
16 settled on?
17 A I think all of the elements that are there
18 are in there. I think they had -- they ended up having
19 more levels of status than what's on here.
20 Q Why?
21 A Just because I think it was too broad for
22 those levels. But I don't know why they ended up
23 putting it into more levels.
24 Q And at this time, was the plan to sell
25 tokens to the public once Kik had created this MVP?

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1 A I can't really recall that. As I said
2 earlier, I wasn't involved that much in the actual
3 product side of it.
4 Q And then I think 892 is a -- actually, 890
5 is final allocation and white paper. Do you see that?
6 A Yeah. Yes.
7 Q So does this describe TDE of ten percent of
8 the tokens?
9 A Yes.
10 Q So the plan at this time was to sell ten
11 percent of the tokens?
12 A Yes. What I'm just taking a look at is --
13 that's not right because we ended up -- again, when we
14 looked at how do we prevent speculation from the main
15 presale investors, we had vesting in place. So it says
16 no vesting, but we did --
17 Q So that changed?
18 A That changed.
19 Q So it says no vesting, but that changed?
20 A That changed, yes.
21 Q But did the plan to sell ten percent of the
22 tokens --
23 A No.
24 Q That never changed?
25 A No.

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1 Q Okay. And then there's the sales process
2 slide. A couple of more on that that ends in 92.
3 Do you see sales process?
4 A Yes.
5 Q So at this point in time, was the plan to
6 sell the tokens sort of in a presale stage or in a
7 token distribution event stage?
8 A Yes.
9 Q And the presale was the sale to accredited
10 investors?
11 A Yes.
12 Q And the TDE was the sale to the general
13 public?
14 A Yes.
15 Q And at this point -- at least at this point
16 in time, the aim was to run the TDE in two months?
17 A Yes.
18 Q And then I think the next page is a chart,
19 like we saw before.
20 A Yes.
21 Q Does that -- do you see the page that says,
22 "Token sales structure soft cap"?
23 A Yes.
24 Q Did that correctly lay out the token sale
25 structure as it was planned at this point?

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1 A Yes, as it was planned at this point.
2 Q So, again, that's to sell ten percent of
3 the float?
4 A Yes.
5 Q Again, this says SAFT. So some of this
6 would be sold through the SAFT process, and some of
7 it --
8 A Right.
9 Q -- to the public; is that right?
10 A Yep.
11 MR. MITCHELL: I'll tell you what, let's go
12 off the record at 4:10.
13 THE VIDEOGRAPHER: Going off the record.
14 The time on the video monitor is 4:11 p.m.
15 (A brief recess was taken.)
16 THE VIDEOGRAPHER: We are back on the
17 record. The time on the monitor is 4:25 p.m.
18 BY MR. MITCHELL:
19 Q While we were on the break, did you have
20 any substantive conversations with the staff about the
21 case?
22 A No.
23 Q All right. So before we went on the break,
24 we were talking about the meeting board call. Was
25 there -- sorry. The board call, the end of May. Was

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1 there an official sort of approval, like, "Hey, let's
2 go forward"?
3 A Sorry. Was it the board call or the
4 sit-down we were doing?
5 Q Sorry. I thought we were looking at a
6 board call sort of --
7 A Okay. I thought you said --
8 Q No, no problem. Let me just come back.
9 MR. MENDEL: I think the board call had in
10 it the slides from the --
11 THE WITNESS: Oh, great. That's right.
12 Right. It was the sit-down. Right. You're correct.
13 Okay.
14 BY MR. MITCHELL:
15 Q Let me just ask you this, because maybe
16 it's my assumption. Can you turn to the page that ends
17 in 889 that says, "Proposed product MVP"? Do you see
18 that?
19 A Yes. That was the -- that's right. That's
20 the slide.
21 Q Is that a slide you think they showed at
22 the sit-down?
23 A Yes. I can't recall. Probably not because
24 it's not like -- I can't recall, quite frankly.
25 Q Okay.

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1 A Because I'm not sure we would show a lot of
2 legal at the sit-down, right.
3 Q Yeah. That's right. Sorry. My
4 understanding -- or my read of this was that these were
5 the slides for the board call.
6 A That incorporates.
7 Q Right. Sorry. Does this look like the
8 slides from the board call to you?
9 A Yes.
10 Q Okay. And then -- right. One of them says
11 sit-down, but I assumed that that may or may not have
12 been recycled from something earlier or some of the
13 slides might be used from something earlier.
14 A Right. That's correct.
15 Q So do you know, on this board call, like
16 was there an official vote or anything that you
17 remember?
18 A No. I'd have to look at the minutes.
19 Q That's right. And I apologize. I did not
20 bring all of the minutes down. So we'll just go from
21 here. Did you go to New York for the announcement?
22 A Yes.
23 Q Were you in the room when it happened?
24 A No.
25 Q No?

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1 A It was --
2 Q Were you part of the group that was kept
3 out because the crowd was too big?
4 A Yes. You know about it?
5 Q Yes. I had someone else -- I forget who --
6 A So William was quite upset that I didn't
7 get in, but that's what happened. Tanner, myself,
8 there were probably about four of us from our time that
9 didn't get in. It was a little bit of a miscue. It
10 wasn't his fault.
11 Q On that trip to New York, did you -- well,
12 let me start with the announcement. So you didn't
13 actually physically see the announcement?
14 A No.
15 Q How did it seem to go to you, though,
16 afterwards? What was your --
17 A I heard positive reaction, but that was all
18 I can --
19 Q And Kik published the white paper at about
20 the same time?
21 A I believe so.
22 Q And that was -- that was just published on
23 Kik's website?
24 A Yes.
25 Q So anyone who had access to the Internet,

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1 to that website could get the white paper?
2 A I believe so.
3 Q All right. On that trip to New York, did
4 you meet with anyone else about the Kin idea?
5 A Yes.
6 Q Who did you meet with?
7 A We met with -- I think it was Dan Morehead,
8 that trip we met. We met with some of the other
9 presale investors. I believe Maple was one of them.
10 We met with a group that had -- I forget what his name
11 was, but he was doing something like an incubator with
12 startups. And he had a VC there and they were looking
13 at how they would use Kin as to help these startups to
14 get going.
15 Q Do you remember that person's name?
16 A No, I can't recall.
17 Q Tell me -- so Morehead -- Dan Morehead
18 works for Pantera?
19 A Yeah.
20 Q And do you -- sort of tell me about the
21 meeting. Was it in person?
22 A Yes.
23 Q Like where did you meet him?
24 A At our New York offices.
25 Q Was there a presentation to him?

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1 A I think Ted just had a conversation with
2 him.
3 Q Were you there for it?
4 A Yes.
5 Q What was the -- what was the conversation?
6 A I can't recall. I recall him saying that I
7 guess he had looked at the white paper, because he was
8 very complimentary on it. Being one of the first ones
9 that was a real business, he could understand. And so
10 it was very, very supportive.
11 Q Okay. And the meeting was about Pantera
12 potentially purchasing --
13 A Yes.
14 Q -- Kin tokens?
15 A Yes.
16 Q What's Maple?
17 A Maple was another group out of Toronto. If
18 I recall correctly, I think they bought about
19 4.5 million in the presale. And then that was also
20 that week when we met with, as I mentioned earlier,
21 Brock Pierce who --
22 Q Can I just bring you back to Maple for a
23 second?
24 A Yes.
25 Q You met them in New York?

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1 A Yes.

2 Q Do you remember who you met from Maple?

3 A I can't remember. If you mention a name, I

4 might recall.

5 Q Is it Steven Nerayoff?

6 A That name sounds familiar.

7 Q Okay. Did you also meet with them in Kik's

8 New York office?

9 A No, I don't think we met with him in the

10 office. We met with him -- I think he was also not in

11 the conference, so we were at a Starbucks across the

12 road, and somehow we got introduced.

13 Q Just a Manhattan Starbucks?

14 A Yeah.

15 Q Okay. And did you talk to him about

16 potentially his group purchasing Kin tokens?

17 A I don't think there was that much

18 discussion at that time. He was going through his

19 history and how he had been involved in crypto and how

20 he was a person that came up with the term gas, you

21 know, when they put -- to accelerate a transaction in

22 the mining world. And that's what I remember.

23 Q Sorry. The person you talked to said that

24 or Steven Nerayoff?

25 A Steven, yeah.

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1 Q Okay. And then the incubator, I apologize,

2 did you say -- do you remember who you met from the

3 incubator?

4 A No. If you have -- do you have some names

5 there? I might remember. I thought it had an S or

6 something, but I can't really recall.

7 Q That's fine. But, again, was that in the

8 New York -- Kik's New York office?

9 A No. That was in the Starbucks there.

10 Q Okay. All right. Other than the

11 Starbucks, were there any other meetings that you had

12 with people about the Kin token?

13 A In New York?

14 Q In New York.

15 A No, that was basically it -- oh, I think we

16 met with -- not the fellows from Betaworks, but the

17 fellows that had started Betaworks originally.

18 Q Protocol Labs?

19 A No, we didn't meet with them. That

20 wasn't -- that wasn't the people that started

21 Betaworks. So there's some sort of involvement with

22 them, but they were no longer in Betaworks, and they

23 came in. I don't think they ended up buying.

24 Q The white paper that was published, did you

25 have a role in drafting it?

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1 A I edited sections of it, but I didn't draft

2 any of it.

3 Q Okay. When you say edited, did you just --

4 A Review a copy of it, and then, you know --

5 Q Did you have substantive comments?

6 A Pardon.

7 Q Did you have substantive comments or

8 just --

9 A I don't recall, quite frankly, if I had

10 major comments. I thought it was fairly well written

11 when I read it the first time.

12 Q And what did you consider its target

13 audience to be?

14 A I think it was basically -- well, it was a

15 combination of, I think, both the presale investors and

16 then actual users, because it discussed a lot about the

17 applications and what you could do with the token and

18 what we were looking at going forward.

19 Q So in your mind, it was both sort of the

20 accredited investors --

21 A Yes.

22 Q -- and also to the general public?

23 A Yes.

24 Q And when you say the uses, did the white

25 paper discuss, like, actual uses that that day, in May,

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1 you could exchange Kin for something?

2 A No.

3 Q Did the white paper describe things that --

4 ways that you could actually exchange Kin for something

5 that were live and active as of the date of the token

6 distribution event?

7 A I don't recall what was -- what we had in

8 there exactly.

9 Q Okay. Were there use cases in the white

10 paper?

11 A Yes.

12 Q Is that what you're talking about, the --

13 A Yes.

14 Q Were those use cases sort of hypothetical

15 or real?

16 A A lot of them were use cases that we had

17 done in Kik Points, and use cases that we would see

18 transferring over into the Kin ecosystem.

19 Q There were use cases that you predicted

20 would be used in the future?

21 A Yes. Right.

22 Q And do you -- go on.

23 A Which is why getting the product out and

24 the technology to show that it works is really

25 critical, because nobody would, like, go in and invest

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1 something based on a hypothetical situation, on how
2 cryptocurrency was new. So they needed to see that
3 this was something that was there and real.

4 **Q** Okay. At the time of the token
5 distribution event, were any of the use cases in the
6 white paper actually implemented in the Kik messaging
7 app?

8 **A** Well, when you say use cases, the use
9 cases, some of the use cases were, but we didn't have a
10 currency or value exchanged at that point with those.
11 We didn't have a currency attached to it. So you could
12 chat with a bot, like in some cases, but there was no
13 value exchange at that point.

14 **Q** Okay. Let me be more direct. I'm going to
15 give you what we just marked -- what's been marked a
16 long time ago as Exhibit 2. Do you recognize
17 Exhibit 2, which is --

18 **A** Yes.

19 **Q** -- KIK_000001 to 28?

20 **A** Yes.

21 **Q** Is this the white paper?

22 **A** Yes.

23 **Q** Okay. So let me just take you to the use
24 cases. I'm just going to take you to the use cases
25 that are on -- say, that they're starting on KIK_13.

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1 Can you just flip from 13 to 15 for me?

2 **A** Yes.

3 **Q** At the time of the token distribution
4 event, could people go into the Kik app and use their
5 Kin tokens to do any of the things that are described
6 here?

7 **A** No.

8 **Q** Okay. I apologize. That was the question
9 I was asking before.

10 **A** Okay.

11 **Q** I think I was asking it inartfully.

12 **A** Right.

13 **Q** Let me take that back from you.

14 Who -- did someone approve this? Is
15 someone the final voice of --

16 **A** I think -- I don't know. I can't recall
17 whether we actually submitted it to the board for board
18 approval or not or they read it. I can't -- I don't
19 have a recollection.

20 **Q** Did it have a primary author? Like was
21 there one person who was sort of responsible for the
22 overall --

23 **A** No. We had each -- whether it was
24 CoinFund, Cointree, Kik, everybody contributed to
25 various sections of the white paper.

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1 **Q** Thank you. After the white paper, we
2 discussed there was some kind of a road show. Did you
3 have a role in the road show?

4 **A** I was involved in some of the meetings on
5 the road show. And in some cases, I was involved in
6 some conference calls.

7 **Q** And who did you meet with as part of the
8 road show?

9 **A** So I met with -- as I said, in New York,
10 the parties that we spoke about earlier. And then
11 Polychain was the name of the company that Olaf was at.

12 **Q** Yes.

13 **A** So I was on a call with him and his
14 partner.

15 **Q** He's in San Francisco?

16 **A** Yes. I'm just trying to think of who else
17 I met with. I can't recall, unless you have a list I
18 could sort of go through, I can't remember what --

19 **Q** Have you heard of a company called Protocol
20 Labs?

21 **A** Yes, but I didn't -- I had one discussion
22 with them on the phone, yes.

23 **Q** Okay. I'll just -- let me just flip to
24 that. I'm going to mark as Exhibit 173 a document with
25 the Bates number PL 000062 to 66.

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1 (SEC Exhibit No. 173 was marked for
2 identification.)

3 BY MR. MITCHELL:

4 **Q** Can you just take a look at that? That's
5 Exhibit 173. Do you recognize this document?

6 **A** No, I don't recognize it. I recall some of
7 the questions or some of the discussion.

8 **Q** Okay. On its face, it appears to be an
9 e-mail from Tanner Philp on June 8th, 2017, to Jesse
10 Clayburgh?

11 **A** Yes.

12 **Q** Do you know who Jesse -- is Jesse Clayburgh
13 from Protocol Labs?

14 **A** Yes. And I'm just -- I can't recall the
15 connection. Protocol Labs was CoinList, wasn't it?
16 There's so many names that are coin. I got to go back
17 in my memory. Was Protocol Labs CoinList or -- oh,
18 AngelList. Right.

19 **Q** AngelList is the -- did Kik work with
20 AngelList or a spinoff of AngelList to do the -- so
21 sort of confirm that the --

22 **A** Exactly. CoinList.

23 **Q** -- presale purchasers were --

24 **A** Accredited, yes.

25 **Q** -- accredited investors? Right.

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1 A And my understanding, that was a process
2 that had been used a lot for the purpose of determining
3 someone's accreditation.
4 Q You said you had remembered the questions.
5 Are the first two pages of this document sort of
6 questions that Protocol Lab asked and then Tanner Philp
7 answered?
8 A Uh-huh.
9 Q I'm sorry. I apologize.
10 A Sorry. Yes.
11 Q And then there's a description sort of on
12 the second page. That says -- do you see, "How do you
13 intend to distinguish KYC U.S. citizens and
14 noncitizens? Would you also need this service for your
15 presale?" Do you see that?
16 A Sorry. Where is that on the page?
17 Q It's a question, about two-thirds of the
18 way down, "How do you intend to distinguish KYC U.S.
19 citizens" --
20 A Oh, right there. Sorry. Yeah.
21 Q And does Mr. Philp write, "Below are the
22 pieces of information we are planning on collecting for
23 our KYC process in the public sale"?
24 A Yes.
25 Q Okay. And are those the -- is this the KYC

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1 process that you were talking about earlier?
2 A Yes. And that -- yeah, that's the KYC
3 process.
4 Q And then right down below that, it says,
5 "I'm a little unclear as to the actual mechanics of how
6 the presale relates to the later public sale. The Kin
7 white paper declares ten percent allocation of tokens
8 to token sale participants. Is that both presale and
9 public sale? If so, what's the distribution between
10 the two? If not, then either Kik or the Kin Foundation
11 is selling some of its Kin to public sale investors,
12 how does the presale investment price relate to public
13 sale price?" Do you see where I read that?
14 A Yes.
15 Q And then does Mr. Philp write below that,
16 "The tokens that will be sold to the investors in the
17 presale comprised part of the ten percent that will be
18 sold"?
19 A Yes.
20 Q Okay. And was that true?
21 A Yes, presale investors were part of the ten
22 percent.
23 Q And then, after that, he provides sort of
24 another version of the sale structure that we talked
25 about earlier?

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1 A Yeah, with the 50 million being with the
2 SAFT presale investors.
3 Q So as of early June, that's --
4 A Yes.
5 Q -- this was the sale structure that was
6 planned at that time?
7 A Yes.
8 Q So let me go back. Let me take 173 back
9 from you. You said you -- when you met with folks, did
10 you -- you met with folks, were you part at all of
11 going to conferences or things like that?
12 A The only conference I went to -- and I
13 can't really recall when it was, if it was even after
14 we did the token sale -- was Money20/20, and that was
15 in Vegas.
16 Q In Vegas.
17 A Right. And I believe that was after,
18 because I think that conference takes place in October.
19 Q And Mr. Livingston spoke at that
20 conference?
21 A Yes.
22 Q Did you go to any conferences before the
23 token distribution event where Mr. Livingston spoke?
24 A Well, the one I missed or was --
25 Q Right. You almost got to it.

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1 A I almost got to it. I was at one that was
2 in Toronto. And I can't, again, recall when that was.
3 It was a -- in what's called the MaRS Centre.
4 Q Who spoke at that?
5 A Ted did. He did a sit-down with William.
6 And I believe that was -- I think that was after the
7 token sale, though. It was just a general conference
8 they had with the number of people from the crypto
9 space and talking to -- MaRS Centre is like a startup,
10 like an incubator building that the government supports
11 a lot until they had a night where they had a
12 get-together for -- there must have been about 200
13 people there. And that's --
14 Q So sitting here today, do you remember
15 being at any of the conferences or big presentations
16 between the announcement and the token distribution
17 event?
18 A No, not that I can recall offhand.
19 Q Okay. When you did meetings with people,
20 did you have slides to show them about the -- when
21 you -- the meetings about the Kin token offering, did
22 you have slides or handouts for them?
23 A No. The big ones I was involved in was
24 where Ted was involved. And he is very -- doesn't
25 really like slides as much. He likes a conversation

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1 where he's got sort of a one-to-one audience.
2 Q He and I agree.
3 A Yeah.
4 Q So that's good. Okay. Can I just -- I'm
5 going to give you Exhibit 174.
6 (SEC Exhibit No. 174 was marked for
7 identification.)
8 BY MR. MITCHELL:
9 Q And literally just ask: Do you know what
10 this is? Exhibit 174 has Bates numbers KIK_00044492 to
11 521. And on its face, it says, "Kin, the first
12 mainstream adoption of cryptocurrency," June 2017.
13 A Yes.
14 Q Do you recognize this?
15 A I don't recall it offhand.
16 Q Okay. Then I will take it back from you.
17 I'm going to give you one more, which will be
18 Exhibit 175.
19 (SEC Exhibit No. 175 was marked for
20 identification.)
21 BY MR. MITCHELL:
22 Q Which is actually an e-mail from Mr. Philp
23 to you on June 2nd with the subject, "Leave behind
24 deck."
25 A Uh-huh.

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1 Q And Bates number KIK_00017719 to 17742. So
2 my first question will be just: Is this an e-mail
3 Mr. Philp sent to you?
4 A Yes.
5 Q And then what is this -- what is the
6 attachment?
7 A It's a slide deck explaining Kik and Kin
8 integration. And it consists of a lot of the slides
9 that you showed me earlier.
10 Q Did you ever use this deck with anyone?
11 A I can't -- you have a list of all the
12 presale investors. I can look through there and see
13 which meetings I was in.
14 Q I do. I can do that.
15 A Okay. And then I can -- I don't recall
16 offhand which ones I was in and which ones I wasn't.
17 Q Okay.
18 Do you think these were slides used
19 with potential buyers?
20 A Presale investors, yes.
21 Q What deck was -- was this the kind of thing
22 that could be left with the client?
23 A Yeah. And then they would also reference
24 the white paper.
25 Q Okay. I mean, as far as you know, was

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1 everything in here true at the time -- at the time that
2 it was --
3 A I've got to take a look.
4 Q While you look through it, let me just go
5 see if I can find me that list. Tell me when you're
6 ready.
7 A That seems to be all true.
8 Q Okay.
9 Let me take 175 back from you. And
10 I'll give you the list that I think you were asking
11 about. These are Exhibits 132 and 133. 132 is a
12 single-page document with the Bates number KIK_000283.
13 A Okay.
14 So Alex, obviously, I know. He was
15 with CoinFund.
16 Q Alex Felix?
17 A Yeah.
18 Q While you were at Kik, did Mr. Felix --
19 during the time you were at Kik, did Mr. Felix ever pay
20 for those tokens? Did he ever pay the money for the
21 SAFT?
22 A I can't recall. I think he did. I can't
23 recall whether it was part of the -- we did have some
24 coins and we did have some cash as part of the deal.
25 But it went back and forth so many times, I can't

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1 really recall where we ended up.
2 Q Okay.
3 Anybody else on this list on 132 who
4 you --
5 A Betaworks, I recall that discussion.
6 Q So you had a conversation with Betaworks
7 about buying Kin tokens?
8 A Yes.
9 Q In person or on the phone?
10 A On the phone.
11 Q And they're in New York City?
12 A Yes. Blockchain Capital, that was -- I
13 believe that's the fellow that -- Blockchain Capital,
14 Spencer was one of the brothers of -- that's where
15 that -- Brock Pierce told us he's part of Blockchain
16 Capital when he wasn't. So that's why I was saying
17 there was a bit of a disconnect between Brock, and
18 these guys seemed pretty buttoned down. Well, Daniel
19 Pellet is from Cointree. Delrina is Dennis at XTL. He
20 was the one that actually told me that we shouldn't KYC
21 nobody in the industry. He's one of the earlier
22 investors.
23 Q There's a Maple Ventures, LLC. Is that the
24 Maple --
25 A That's the one I -- that's the one I was

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1 telling you about, Steve Nerayoff, that we met at the
 2 Starbucks.
 3 **Q Okay. Do you know who Novafam is?**
 4 **A** No. I'm just trying to remember. I don't
 5 recall.
 6 **Q At the time, I think it was a family office**
 7 **for --**
 8 **A** I think I remember meeting a gentleman that
 9 had just joined.
 10 **Q Novafam?**
 11 **A** Yes.
 12 But it's a Kim. I don't recall the
 13 name Kim, that's why I'm sort of stumbling a little
 14 bit. Then Dan, obviously, from --
 15 **Q Pantera?**
 16 **A** Pantera.
 17 **Q Did you meet PB Digital, that's Pete**
 18 **Briger's group at Fortress?**
 19 **A** No, I don't recall them. Oh, they're
 20 Fortress?
 21 **Q The people at PB Digital -- PB Pete Briger**
 22 **at Fortress. And it's a group of people maybe that**
 23 **made Fortress.**
 24 **A** I remember they were -- they were taking a
 25 fairly large amount. It's part of a group that was

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1 had.
 2 **Q Yeah.**
 3 **A** And then -- I don't really recall.
 4 **Q Let me give you what was already marked as**
 5 **Exhibit 133. It's a similar list with the people**
 6 **who -- appears to be people who bought. But it's**
 7 **just -- just like the different data, it has dates and**
 8 **amounts instead of addresses.**
 9 **A** Uh-huh.
 10 **Q Can I just ask, are either of these**
 11 **exhibits -- did you help create either of these?**
 12 **A** No.
 13 **Q And did you ever see them while you were**
 14 **working at Kik?**
 15 **A** I recall seeing them, I think.
 16 **Q When you worked at Kik, what did you**
 17 **understand these to be?**
 18 **A** Sorry?
 19 **Q When you worked at Kik, did you understand**
 20 **these to be the list of the people who bought --**
 21 **A** Yes.
 22 **Q -- SAFTs?**
 23 **A** Yes.
 24 **Q Okay. That's great. Anything -- I got**
 25 **them out because that's --**

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1 Pantera, PB Digital, and someone else, but I can't
 2 remember who the third party was. Because we had a bit
 3 of a -- it was a bit of a rare issue, but we had --
 4 Pantera wanted more.
 5 Like we could have raised 75 to 100 million
 6 in presale and we had to pull people back. So there
 7 was a lot of discussion going on there. PolyChain, I
 8 was on a phone call with Olaf and his partner, who's
 9 also a Canadian, but I can't remember his name offhand.
 10 **Q But they were -- they lived in San**
 11 **Francisco?**
 12 **A** Yes. Yeah.
 13 **Q Renjen, LLC, what's that? If you know. Do**
 14 **you know what Renjen is?**
 15 **A** No, I don't. I can't recall them offhand.
 16 **Q Did you have any dealings with SAX Master**
 17 **Fund or anything for them?**
 18 **A** No.
 19 **Q What about Seiff & Company?**
 20 **A** The name rings a bell, but I can't really
 21 recall specifically. Tal, who's a fellow from
 22 Cointree.
 23 There was a fellow that was a product
 24 manager at Wix. And the same with Uriel, his brother.
 25 William, as I mentioned before, is the advisor that we

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1 **A** No, that's fine.
 2 **Q If there's anything else that refreshes**
 3 **your recollection, let me know. Okay. Let me give you**
 4 **back 133.**
 5 **A** Yes.
 6 **Q Halfway down, there is a name Marc Heinke.**
 7 **A** Yes.
 8 **Q Who's that?**
 9 **A** He's my brother.
 10 **Q Okay. Did your brother purchase?**
 11 **A** Yes.
 12 **Q In the -- he bought \$10,000 in the SAFT?**
 13 **A** Yes.
 14 **Q Do you know, did he -- did he actually get**
 15 **Kin delivered to him after?**
 16 **A** Yes. Then he would be a sophisticated
 17 investor, accredited investor.
 18 **Q Sorry. Did you purchase -- did you**
 19 **purchase in the SAFT?**
 20 **A** Yes -- no. We purchased in the employee
 21 pool within the SAFT. So we had the vesting and
 22 everything else.
 23 Actually, I don't see my name, or am
 24 I on here?
 25 **Q Did you -- so outside of buying through an**

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1 employee pool, did you buy --
 2 A No.
 3 Q -- Kin tokens any other way?
 4 A No. My son bought some under the public
 5 sale, but he's not on here. But he wouldn't be on
 6 here.
 7 Q Where does he live?
 8 A He lives in -- he lives in Halifax, but he
 9 also was an employee.
 10 MR. MITCHELL: Okay. All right. Let's go
 11 off the record.
 12 THE VIDEOGRAPHER: Going off the record.
 13 The time is now 4:53 p.m. This ends Disc Number 3 of
 14 3. We're concluded today at 4:54 p.m.
 15 (Whereupon, at 4:54 p.m., the examination
 16 was adjourned.)
 17 * * * * *

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1 PROOFREADER'S CERTIFICATE
 2
 3 In the Matter of: KIK INTERACTIVE
 4 Witness: Peter Heinke
 5 File Number: HO-13388-A
 6 Date: Thursday, September 20, 2018
 7 Location: Washington, D.C.
 8
 9 This is to certify that I, Christine Boyce,
 10 (the undersigned) do hereby swear and affirm that the
 11 attached proceedings before the U.S. Securities and
 12 Exchange Commission were held according to the record,
 13 and that this is the original, complete, true and
 14 accurate transcript, which has been compared with the
 15 reporting or recording accomplished at the hearing.
 16
 17
 18 _____
 19 (Proofreader's Name) (Date)
 20
 21
 22
 23
 24
 25

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1 REPORTER'S CERTIFICATE
 2
 3 I, Melinda Johnson, CSR, reporter, hereby
 4 certify that the foregoing transcript is a
 5 complete, true and accurate transcript of the testimony
 6 indicated, held on Thursday, September 20, 2018, at
 7 Washington, D.C. in the matter of: Kik Interactive.
 8
 9 I further certify that this proceeding was
 10 recorded by me, and that the foregoing transcript has
 11 been prepared under my direction.
 12
 13 Date: _____
 14 Official Reporter: _____
 15 Diversified Reporting Services, Inc.
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. HO-13388-A
) AMENDED 12-11-2018
KIK INTERACTIVE)

EXHIBIT

22

19-cv-5244-AKH

WITNESS: Peter Heinke

PAGES: 265 through 501

PLACE: U.S. Securities and Exchange Commission
100 F Street, N.E.

Washington, D.C. 20549

DATE: Friday, September 21, 2018

The above-entitled matter came on for hearing,
pursuant to notice, at 9:48 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

<p style="text-align: right;">Page 266</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Securities and Exchange Commission:</p> <p>4 BRENT MITCHELL, ESQ.</p> <p>5 JAMES MURTHA, ESQ.</p> <p>6 DAVID MENDEL, ESQ.</p> <p>7 STEPHAN SCHLEGELMILCH, ESQ.</p> <p>8 Securities and Exchange Commission</p> <p>9 100 F Street, N.E.</p> <p>10 Washington, D.C. 20549</p> <p>11 (202)551-4683</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 268</p> <p>1 CONTENTS</p> <p>2 WITNESS: EXAMINATION</p> <p>3 Peter Heinke 269</p> <p>4 EXHIBITS DESCRIPTION IDENTIFIED</p> <p>5 176 E-mail 273</p> <p>6 177 E-mail 275</p> <p>7 178 E-mail 305</p> <p>8 179 E-mail 319</p> <p>9 180 E-mail 339</p> <p>10 181 E-mail 354</p> <p>11 182 E-mail 381</p> <p>12 183 Document 398</p> <p>13 184 Document 406</p> <p>14 185 E-mail 424</p> <p>15 186 Letter 442</p> <p>16 187 Medium Post 446</p> <p>17 188 Certificate 454</p> <p>18 189 E-mail 461</p> <p>19 190 Services Agreement 464</p> <p>20 191 Agency Agreement 464</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 267</p> <p>1 APPEARANCES(CONT.):</p> <p>2</p> <p>3 On behalf of the Witness:</p> <p>4 LUKE CADIGAN, ESQ.</p> <p>5 BRETT DEJARNETTE, ESQ.</p> <p>6 JOAN LI, ESQ.</p> <p>7 Cooley LLP</p> <p>8 500 Boylston Street</p> <p>9 Boston, Massachusetts 02116</p> <p>10 617.937.2480</p> <p>11 KENNETH LENCH, ESQ.</p> <p>12 Kirkland & Ellis</p> <p>13 655 Fifteenth Street, N.W.</p> <p>14 Washington, D.C. 20005</p> <p>15 (202)879-5270</p> <p>16</p> <p>17 Also Present:</p> <p>18 Steven Jones, Videographer</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 269</p> <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: Good morning. This</p> <p>3 begins Disc Number 1. We are now on the record. The</p> <p>4 time is 9:48 a.m.</p> <p>5 Whereupon,</p> <p>6 PETER HEINKE</p> <p>7 was re-called as a witness and, having been previously</p> <p>8 duly sworn, was examined and testified further as follows:</p> <p>9 EXAMINATION</p> <p>10 BY MR. MITCHELL:</p> <p>11 Q Good morning again. I just want to confirm</p> <p>12 with you, you understand you're still under oath from</p> <p>13 yesterday?</p> <p>14 A Yes. Yes.</p> <p>15 Q And you understand -- and you are still</p> <p>16 here pursuant to the subpoena that was Exhibit 165?</p> <p>17 A Yes.</p> <p>18 Q We appreciate your coming back for a second</p> <p>19 day. And we're going to try to be as efficient as we</p> <p>20 can. Couple of practical things to start out with.</p> <p>21 Yesterday, when we were talking, we talked about the</p> <p>22 white paper and your -- and I think you had said that</p> <p>23 you edited parts of it. And I apologize, I don't think</p> <p>24 I asked --</p> <p>25 Do you remember what parts that you edited?</p>

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1 A No, I don't recall. I would have likely
2 read the whole document just to see if there's
3 something inconsistent, but that's all I recall.
4 Q Okay. And --
5 MR. SCHLEGELMILCH: If you saw the table of
6 contents of the white paper, would that maybe refresh
7 your recollection about which sections you edited?
8 THE WITNESS: I can take a look at it and
9 try. But I don't think --
10 BY MR. MITCHELL:
11 Q I'm going to give you back what we showed
12 you yesterday as Exhibit 2. Exhibit 2 is the white
13 paper.
14 A There's nothing specifically that stands
15 out to me that I edited. No, nothing specific.
16 MR. SCHLEGELMILCH: Thank you.
17 BY MR. MITCHELL:
18 Q All right. Earlier yesterday, we also
19 talked about the concept of an MVP.
20 Do you remember that?
21 A Yes.
22 Q And by the time of the white paper, had Kik
23 settled on what the MVP would be when it sold tokens?
24 A I don't recall, but I don't think so.
25 Q So that was still being worked on?

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1 A Yes.
2 Q Was there a point at which that was
3 finalized?
4 A No. As I think I said yesterday, I got to
5 a point that I was busy on a number of different
6 things. So I got out of the process in terms of what
7 the product was. I was working a lot on, at that time,
8 the Cointree acquisition. So I wasn't really -- a lot
9 of that was discussion that went on between the product
10 team and counsel directly.
11 Q Okay. But you were involved in it sort of
12 at the start -- at the start of the discussion?
13 A No. That was mostly -- that was product
14 area. So --
15 Q What do you mean it was product area?
16 A Well, I was responsible for more of
17 financial and that side of the equation. And that was
18 my area as opposed to product.
19 Q And so who was -- did you have an
20 equivalent in the product area?
21 A When you say "equivalent," what do you mean
22 by that?
23 Q Did you lead the finance area?
24 A I led the finance area.
25 Q Was there someone that led the product area

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1 at the time?
2 A Yeah. Well, that was the time where there
3 was Chris and Eran, But I can't really remember the
4 timing as to who was responsible for what at that time.
5 But typically, the product area involved Ted, the CEO.
6 That's his -- he's a major product person. It would
7 have been -- Eran would have been involved with that.
8 I think Elan to some extent in Tel Aviv. Tal was --
9 depending on when -- Tal got involved a lot more after
10 the Tel Aviv summit. And then -- sorry. Did I mention
11 Ted? Right?
12 Q Ted, yeah.
13 A Yeah. Those are sort of some of the main
14 people in the product area.
15 Q What about Tanner Philp? Was he involved
16 in deciding what the MVP would be?
17 A No, I don't think so. We had discussions
18 about what it was going to be, but it wasn't like we
19 had day-to-day input, or we would meet at a leadership
20 meeting and we'd get an update on what it was.
21 Q And, sorry, there's a person named Jairaj,
22 J-a-i-r-a-j?
23 A Yes.
24 Q All right. That's his first name, right?
25 A Yes.

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1 Q What's his full name, if you remember?
2 A Is it Sehti? S-e-h-t-i, I think. I don't
3 know. I would just refer to him as Jairaj.
4 Q Okay. And did he have a role in product --
5 A He was working in Tel Aviv. Like most of
6 the product was being -- for the cryptocurrency side
7 was being done in Tel Aviv. And he was in Tel Aviv.
8 So most of the messaging product was done in Waterloo.
9 And then the product for the Kin was all being done out
10 of Tel Aviv. So we had discussions with them like you
11 would as any company have, meetings and updates and
12 that sort of thing. But that was sort of the extent.
13 We were probably a little bit more involved
14 in the beginning, but we stopped that because it was
15 just becoming too much of a bottleneck for the whole
16 thing for us to be a part of that. Like a lot of
17 questions were, you know, around different elements of
18 the product that I had no -- that was not my expertise.
19 Q Well, what kind of elements?
20 A Like what the product, I guess, did at the
21 time and that sort of thing.
22 Q I'm going to actually sort of walk through
23 a couple of the e-mails just because I want to
24 understand where we are. I'm going to give you
25 Exhibit 176.

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1 (SEC Exhibit No. 176 was marked for
2 identification.)
3 BY MR. MITCHELL:
4 Q It's a two-page document with the Bates
5 number KIK_00092469 and 70. Can you just -- again, as
6 we did yesterday, take as much time as you want to look
7 at it. My first question is going to be: Do you
8 recognize the document?
9 A Yes.
10 Q So what is it?
11 A It's an e-mail to me from Tanner.
12 Q Okay. I'm just giving it to your lawyer,
13 so let me give them a second to look.
14 A Yeah.
15 Q This is about the MVP product that we were
16 talking about before?
17 A That's correct.
18 Q The one that eventually -- at the time the
19 TDE was status and access to digital stickers?
20 A Yes.
21 Q Okay. So what's happening -- this is a
22 May 16th e-mail. What -- where were you in the process
23 at this point?
24 A This was early on in the process. And this
25 is, as I mentioned, at the beginning of the process. I

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1 was involved to some extent, but we then ended up
2 becoming a bottleneck that I didn't. A lot of these
3 discussions then went between the product group and
4 counsel directly. So at the beginning of May, this
5 was -- we started doing the Cointree acquisition. I
6 got more and more engaged in that.
7 And so, as I said, from an efficiency
8 standpoint, it made no sense for me to be involved in
9 that process anymore. It's just a bottleneck. A lot
10 of the correspondence went directly from the product
11 people to either our counsel or Eileen, in-house
12 counsel. This was right at the beginning pretty much,
13 May 16th.
14 Q And Jairaj worked for Eran Ben-Ari?
15 A Yeah, he worked -- I don't know if he
16 reported to him directly, but he -- again, there was a
17 lot of work going on because we acquired Rounds at
18 the -- in December. And so there was integration going
19 on with all of the Rounds team. So there's still a lot
20 of who worked for who at specifically a set time. Eran
21 ended up becoming the product manager, chief product
22 officer. But at this time, I don't know if Jairaj
23 reported to Eran or if he reported to Dany or Elan down
24 in Tel Aviv.
25 Q So I'm going to show you an e-mail from the

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1 next day. This will be Exhibit 177.
2 (SEC Exhibit No. 177 was marked for
3 identification.)
4 BY MR. MITCHELL:
5 Q Let's get it to your lawyers first. And
6 then take as much time as you'd like, and then tell me
7 what you -- do you recognize this document?
8 A Yes.
9 Q What is it?
10 A This is an e-mail from Eran to Tanner and
11 then the rest of the executive team for the board
12 updates.
13 Q Including you?
14 A Yes.
15 Q Okay. And so Eran is responding to an
16 e-mail chain from previously that includes a couple of
17 e-mails from Tanner Philp at the bottom?
18 A Yes.
19 Q And he writes, "The MVP has an objective to
20 satisfy compliance requirements"?
21 A Uh-huh. Yes.
22 Q Was that true?
23 A Yes. That's one of the objectives.
24 There's multiple objectives, but that's one of them.
25 Q Okay. What other objectives does he

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1 discuss here?
2 A That's his discussion. But when you ask me
3 about are there other objectives, and I said yes, those
4 are the ones we talked about yesterday that went from a
5 product and technology standpoint. That we had to be
6 first out to market was an important consideration.
7 And then also that the technology work was a brand-new
8 technology.
9 So anybody that was going to incorporate
10 Kin wanted to see that the actual technology worked.
11 So there was multiple reasons. So compliance was one.
12 We were always wanting to be compliant. But getting
13 deemed first to market was really critical, and then
14 also satisfying the technology concerns.
15 Q Okay.
16 A So he's writing it specifically. In his
17 case, more of this relates to the compliance objective.
18 Q Right. Any other objectives other than
19 those three?
20 A Those are the main ones, yeah. Well, I
21 mean, you know, then getting users to start using the
22 product and understanding how it works. As we said
23 earlier, we were the first product to take crypto to
24 sort of mainstream consumers, right? A lot of
25 consumers didn't know, the general public in our user

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1 base. So that was an education piece.

2 **Q Did Kik users know how to send their**
3 **friends digital stickers?**

4 A Yes.

5 **Q What was the education part of this MVP?**

6 A Of this MVP? Just that they use -- they
7 had cryptocurrency in their wallet. They could buy it,
8 and then they could use it -- see within their wallet.
9 And then they would have a status level within the
10 wallet as to showing them what their levels were of
11 cryptocurrency. Then they could also, you know, send
12 it to someone else through Ethereum exchange, using an
13 Ethereum.

14 **Q Was this MVP related in any way to sending**
15 **Kin tokens on the Ethereum blockchain?**

16 A I can't really recall in this case what
17 he's writing here.

18 **Q Okay.**

19 A It was an evolution of it at that period of
20 time. As I said, this was again beginning in May.

21 **Q Right. The MVP that was available at the**
22 **time of the --**

23 A Yes.

24 **Q -- token distribution event, was it in any**
25 **way connected to having people be able to send token to**

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1 **each other using Ethereum blockchain?**

2 A You could -- within the product or you
3 could exchange -- you know what, I can't really recall
4 at that time, quite frankly.

5 **Q What did Kik users -- was status something**
6 **brand new to Kik users?**

7 A No. Status, I think, was -- I don't know
8 if it was new to Kik users. Status was an important
9 element. I think, as I discussed yesterday, we -- when
10 we got the investment from WeChat, we spent a lot of
11 time on what was successful in their platform.

12 And status was a really big issue for their
13 users and their demographic. And it was something
14 that, you know, in this space was very similar. Like
15 people -- status was a big thing. It's not something I
16 can relate to, obviously, but it is a thing for a lot
17 of the kids and the users in our demographic.

18 **Q But it wasn't -- this MVP didn't introduce**
19 **something new when it introduced the idea of status?**

20 A No.

21 **Q And so your Kik users didn't learn about**
22 **status exists because they got this MVP?**

23 A No. It was -- a lot of these elements that
24 we had were things that we had learned within the Kik
25 Points equation and ecosystem. And so now we're just

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1 transferring some of them over here. But it was a
2 different -- with value proposition of points versus
3 cryptocurrencies.

4 **Q Sure. Any other objectives with -- I'm**
5 **talking about the three main ones, then education.**
6 **Anything else?**

7 A Uh-huh. Not that I recall at the time.

8 **Q So the three main objectives, how did the**
9 **MVP of status and access to stickers, how did that help**
10 **the objective of being first to market?**

11 A We were the first cryptocurrency to market.

12 **Q Right. But how did designing a minimum**
13 **viable product of people getting status and access to**
14 **stickers, how did that help that objective of getting**
15 **first?**

16 A Because a lot of our brands and that that
17 we had talked to, they didn't want to jump in with a
18 lot of money at that point in time until they knew that
19 their product would actually work also. And they were
20 extremely relevant to the ecosystem. Those are the
21 ones that we have to provide the offerings.

22 And some of those mission statements you
23 see, some of the things are brand driven. But there
24 are game-changing equations that exist currently in the
25 digital ecosystem. It's not like we're Facebook.

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1 Again, it gets back into this equation of we're not --
2 there's no middleman.

3 It's a one-to-one relationship. So you had
4 to attract those brands in order to get an ecosystem
5 going and have that influx of, you know, capital and
6 cryptocurrency into the ecosystem to make it happen and
7 flourish.

8 **Q Thank you. I guess my question is: How**
9 **did designing the MVP that Kik designed help Kik meet**
10 **its objective of being first in the market?**

11 A I'm not sure I understand what you're
12 driving at.

13 **Q You said there were three main objectives.**

14 A Yes.

15 **Q One you said was to satisfy compliance**
16 **requirements; is that right?**

17 A That's right. That's one, yes.

18 **Q That's one of the main objectives when Kik**
19 **was designing what the MVP would be?**

20 A Yes.

21 **Q Okay. And then you said there were two**
22 **other objectives --**

23 A Yes.

24 **Q One was to be first in the market?**

25 A Yes.

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1 Q Okay. Let me take that one first. How did
2 designing this MVP with these features help Kik become
3 first in the market?

4 A How did designing these features help Kik
5 become first to market? It had to have a product in
6 order to be first to market. So --

7 Q Okay. But the product could have been
8 something different, right?

9 A The product could have been a number of
10 different things, yes.

11 Q Did picking this product or designing the
12 product this way help Kik be first to market?

13 A Yes.

14 Q How?

15 A It's a viable product that we could go out
16 to the market with.

17 Q Any other way?

18 A Any other way that you could design a
19 product to go to market?

20 Q No. Any other way that this -- the reason
21 why Kik picked this design in order to meet that
22 objective.

23 A No. I guess that's the main reason to be
24 first.

25 Q Okay. And then the third -- I apologize.

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1 THE WITNESS: Because first to market, you
2 end up being ahead of the game as a leadership
3 position. You're the one that gets the publicity.
4 Like if you're in the -- for getting developers to the
5 table, like TechCrunch -- like this recently, we had an
6 article where -- in TechCrunch. They're no longer
7 there. But we just got, like, 40 developers to come
8 on. That's a really important piece in this
9 marketplace.

10 MR. MURTHA: If you were second, do you
11 think you would have raised less money?

12 THE WITNESS: No, it wouldn't be a question
13 of money. It's a question of just how people of brands
14 talk to you and everything. It works on a number of
15 different fronts. Like there were a lot of times that
16 I remember that one of the big ad agencies, they would
17 do -- what they would do is they did something with
18 Snapchat where they went in, like -- I think it was --
19 what's one of the big ad companies?

20 They ended up buying -- "We bought
21 \$40 million worth of stuff on Snapchat," is what they
22 said. And they did what's called a pre-buy. So
23 there's all these press, and all these brands end up
24 coming and gathering towards that. It turned out that
25 they did a pre-buy, but they only ever sold \$10 million

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1 MR. MURTHA: Would the other options have
2 taken longer?

3 THE WITNESS: Yeah. A lot of options would
4 have taken longer. That's what the question is. Like
5 a lot of those brand missions and stuff -- first of
6 all, it's not only a question of design. It's a
7 question of bringing value to the ecosystem.

8 So as I said, you need to have brands to
9 bring these missions and everything else as one of
10 them. Or people -- developers developing product to be
11 useful in this ecosystem. When you start out with a
12 new product, you're not going to have a bunch of people
13 develop -- I mean, the equivalency is the internet.
14 Okay? The internet was there.

15 But people then stepped in and started
16 developing apps or developing websites or anything else
17 until the technology was proven out. That's very
18 similar to what's happening here. We had to develop a
19 product -- a base level product that people could see
20 crypto worked in our ecosystem. And until that
21 happens, you weren't going to be able to convince a lot
22 of brands to throw a lot of money at it. That was a
23 really relevant piece.

24 MR. MURTHA: And why was it important to be
25 first?

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1 worth of advertising over a period of two years. But
2 the fact that they were the first to market and made
3 that statement, it put them in the lead as being an
4 innovator and everything else.

5 And that's the same in the tech space here.
6 If you're the first to market, you're seen as being a
7 lead innovator. It's the same thing like -- it's not
8 always going to be success. So we were the first ones
9 to develop the bot platform, ahead of Facebook. But
10 Facebook is just so strong, it doesn't really -- I
11 mean, it puts us in there and put us in front of
12 everybody, but it's not like it's, you know, an exact
13 recipe for winning at that point in time.

14 So it's a major thing from the standpoint
15 of getting people saying, "Hey, these guys are doing
16 something else and they're doing something new," and
17 then they end up experimenting at least to start with
18 you.

19 MR. MENDEL: Did Kik discuss the sticker
20 idea with any brands before going forward with that?

21 THE WITNESS: Oh, yeah. We had a lot of
22 them that did stickers with us with the points
23 ecosystem, also. Like we had Dunkin' Donuts. We
24 had -- I can't remember who did chicken fry. It was a
25 big thing at the time. But I -- a lot of those sort of

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1 brands. It wasn't the area I was involved with, but a
 2 lot of those brands on the platform.
 3 MR. MENDEL: But what about the MVP?
 4 Did --
 5 THE WITNESS: Yeah.
 6 MR. DEJARNETTE: Try to let him finish
 7 asking the question.
 8 THE WITNESS: I'm sorry.
 9 MR. MENDEL: Did Kik specifically discuss
 10 the MVP with certain brands before going forward with
 11 it?
 12 THE WITNESS: Yes, we discussed -- you
 13 don't -- in a lot of cases, you don't discuss directly
 14 with the brands. You talk with an intermediary that
 15 works on behalf of a client to do these different
 16 campaigns. So I can't remember the agency in --
 17 Gary -- there's some big mobile guy, Gary -- I just
 18 can't remember his name right now.
 19 But he would have Pepsi and, like,
 20 Victoria's Secret and all that. You talk to these
 21 agencies. And they always then go and present the
 22 concepts to their clients. So we did -- for the World
 23 Cup as an example. We went to this agency. I just
 24 can't remember the name of the agency. But they wanted
 25 to develop a soccer game for the FIFA.

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1 And so that agency presented the concept to
 2 the brand. And then they can end up building it up
 3 themselves or we would line up a developer to build it
 4 and everything else. We wouldn't necessarily talk to
 5 the brand initially. The agency itself sits in the
 6 middle and does a lot of that stuff.
 7 MR. SCHLEGELMILCH: We've been sort of
 8 talking at a 30,000-foot view. What specifically do
 9 you recall about speaking to any third party about the
 10 Kin project pre-token distribution event?
 11 THE WITNESS: That wasn't my area. That's
 12 marketing.
 13 MR. SCHLEGELMILCH: Okay. But I just want
 14 to make sure that we talk about what you know.
 15 THE WITNESS: Yeah. Yeah.
 16 MR. SCHLEGELMILCH: I mean, I understand
 17 you have a view because you were the CFO.
 18 THE WITNESS: I know that we spoke to
 19 Betaworks, because Betaworks invested to buy Kin in
 20 order to use it with their client's brands to work on
 21 the ecosystem. That's the only one I specifically am
 22 aware of that I was involved with.
 23 MR. SCHLEGELMILCH: Okay. You were
 24 involved with that?
 25 THE WITNESS: I was involved in a

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1 discussion with them, yes.
 2 MR. SCHLEGELMILCH: Okay. Can you tell me
 3 when that was?
 4 THE WITNESS: That was probably in about
 5 April, May time frame.
 6 MR. SCHLEGELMILCH: Okay. Do you know how
 7 many -- do you know where the meeting was?
 8 THE WITNESS: It was a phone call.
 9 MR. SCHLEGELMILCH: Okay. And how long did
 10 it last?
 11 THE WITNESS: I can't really recall. It
 12 was one discussion. And there were subsequent
 13 discussions with the marketing group afterwards.
 14 MR. SCHLEGELMILCH: Okay. But you were not
 15 part of those discussions with the marketing group?
 16 THE WITNESS: No.
 17 MR. SCHLEGELMILCH: So other than
 18 Betaworks, the telephone call with Betaworks, can you
 19 recall any other specific interaction with a third
 20 party regarding the Kin project pre-token distribution
 21 event.
 22 THE WITNESS: From a marketing standpoint?
 23 MR. SCHLEGELMILCH: Yes, sir.
 24 THE WITNESS: No, because I'm finance and
 25 that's not my area.

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1 MR. SCHLEGELMILCH: Okay. Thank you.
 2 BY MR. MITCHELL:
 3 Q I'm sorry and I apologize. I think you --
 4 the third reason -- the third objective, what was
 5 the -- the first two objectives were compliance
 6 requirements and being first. And the third one?
 7 A Technology, that the technology worked.
 8 Q Showing that the technology worked?
 9 A Yes.
 10 Q Okay. So in what way -- how did designing
 11 the MVP with the status and stickers, how did that help
 12 meet the objective that's showing the technology
 13 worked?
 14 A Well, it's -- a lot of the delays were
 15 because of bugs and that in the actual production of
 16 the product. It was like -- you know, they thought it
 17 would work. Like security was a big thing. So I
 18 recall when I was in Tel Aviv at one point, someone was
 19 able to hack, hacked in and got the stickers, right?
 20 As an example, which ruined the whole value equation.
 21 So there were things like that --
 22 Q That was an internal -- that was a task,
 23 right?
 24 A That was a task.
 25 Q Yeah.

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1 A But still --

2 Q It was not an outside hacker?

3 A Yeah. And so those types of things were

4 real issues, or else there were bugs with it. That

5 happens a lot. And so they needed to make sure that

6 the technology really worked. And a lot of people had

7 some of the crypto expertise, as I mentioned, were

8 people from Cointree, too, that we met when we were --

9 you know, when we started, we met them formally when we

10 did the summit in Tel Aviv.

11 Q So what technology did this MVP help show

12 worked? What was the technology that is demonstrated?

13 A The crypto technology, like the encryption,

14 how coins get passed from one to the other, yes.

15 Q This MVP, could anyone pass a coin from one

16 to the other?

17 A Well, you had to integrate it in your

18 wallet. Now you're getting into an area I don't

19 understand. Okay? So it's technology-related and how,

20 you know, coins shift from one to another or even from

21 the network. I don't -- that's not my area of

22 expertise.

23 Q Okay. So I'm going to ask two questions.

24 Do you know what technology this MVP demonstrated to

25 people outside of Kik?

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1 A Specifically the technology, no. Like the

2 underlying technology, no. But that the product works.

3 Q What did you mean by -- what did you mean

4 by the product works?

5 A That there is -- people can buy crypto

6 coins and then have them in their wallet.

7 Q People were holding their Kin in the wallet

8 on the Ethereum blockchain, right?

9 A Which was integrated into Kik.

10 Q What do you mean integrated into Kik?

11 A So I could look at my -- like I can take my

12 phone now and I can look at my Kin balance on my phone

13 within the messenger.

14 Q And that -- so that -- could they do

15 anything else with the Kin tokens in the Kik app?

16 A Status was the main one that they had.

17 They could use -- like it would open up and unlock.

18 Q Yeah. So that -- was that a key

19 technology, as far as you were concerned?

20 A It was a technology that demonstrated that

21 it worked and integrated within the Kik app, yes.

22 Q Integrated means that the Kik app could

23 tell, yes, you own Kin, how many you own, and give you

24 the status?

25 A Yes.

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1 Q And what companies -- what companies were

2 interested in that technology?

3 A As I said, I didn't talk to a lot of the

4 companies from a marketing standpoint, so those were

5 not discussions I was involved in.

6 MR. SCHLEGELMILCH: So you did mention that

7 you were involved in a conversation with Bitrix in

8 April, May 2017?

9 THE WITNESS: Betaworks.

10 MR. SCHLEGELMILCH: Betaworks. Betaworks,

11 April, May 2017; is that right?

12 THE WITNESS: Yes.

13 MR. SCHLEGELMILCH: Did you specifically

14 talk about stickers or status with Betaworks in that

15 call?

16 THE WITNESS: No. From what I recall, they

17 were more interested in the promoted chat side

18 eventually, like having coin for promoted chats.

19 MR. SCHLEGELMILCH: Okay. And that product

20 that promoted chat actually did not exist at the time

21 of the token distribution event?

22 THE WITNESS: No. With coin integration,

23 it did exist, promoted chats did exist.

24 MR. SCHLEGELMILCH: It didn't exist in the

25 sense that you could use Kin to do that?

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1 THE WITNESS: No.

2 BY MR. MITCHELL:

3 Q Betaworks' main interest in the project, as

4 you understood it, was that they thought -- or maybe

5 they or their portfolio companies could earn Kin by

6 running promoted chats?

7 A Yes.

8 Q Anything else?

9 A That was similar to what we had already

10 done in points.

11 Q All right. Anything else?

12 A Not that I can recall.

13 Q They didn't need to buy Kin tokens in order

14 to own Kin tokens by running chats, did they?

15 A They didn't need to buy Kin tokens in order

16 to earn -- so who are you saying by they?

17 Q Betaworks wanted to earn Kin tokens by

18 running promoted chats.

19 A Yeah.

20 Q Did they need to buy Kin tokens in order to

21 do that?

22 A They wouldn't be earning Kin tokens. They

23 would be buying Kin tokens to incentivize people to

24 talk to the chat. That's how they would use it.

25 Q All right. Okay. So the e-mail I just

Page 294

1 showed you is May 17th, so it's about a week before the
 2 planned announcement.
 3 A Yes.
 4 Q I'm going to give you what was previously
 5 marked as Exhibit 114. Exhibit 114 is -- on its front
 6 top, it appears be an e-mail chain from May 18th
 7 involving Eran Ben-Ari, Ted Livingston, Nancy Wojtas,
 8 and the leadership team. It's Bates numbered
 9 KIK_00103093 to 97.
 10 A Can I just take a break out here?
 11 MR. DEJARNETTE: Can we go off the record
 12 for a second?
 13 THE WITNESS: Yeah.
 14 MR. MITCHELL: Sorry. You want to ask them
 15 a question about a privilege issues?
 16 THE WITNESS: Yes. Yes.
 17 MR. MITCHELL: Yes. Go off the record.
 18 THE VIDEOGRAPHER: Going off the record.
 19 The time is 10:17 a.m.
 20 (A brief recess was taken.)
 21 THE VIDEOGRAPHER: We are back on the
 22 record. The time is now 10:27 a.m.
 23 BY MR. MITCHELL:
 24 Q During the break, did you have any
 25 substantive conversations --

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1 A No.
 2 Q -- with the staff about the investigation?
 3 A No.
 4 Q Okay. Great. So before we took the break,
 5 we were looking at Exhibit 114. Is this an e-mail
 6 chain that involved you and the leadership team at Kik
 7 and some other people at Kik?
 8 A And counsel.
 9 Q And counsel. Okay. At the -- if you go
 10 and look all the way at the back -- or not all the way
 11 at the way back -- the second page, you can see
 12 exhibit -- I'm going to point you to Exhibit 117 -- or
 13 177. Do you see that the text from Exhibit 177 --
 14 A Yes.
 15 Q -- is on the second page of Exhibit 114?
 16 A Yes.
 17 Q Okay. So this is a continuation of the
 18 same e-mail chain?
 19 A Yes.
 20 Q If you look at the first page of
 21 Exhibit 114 -- well --
 22 A Sorry.
 23 Q Feel free to look at anything. My real
 24 question is: Though they e-mail -- sorry. At the time
 25 of this e-mail, people were still discussing what the

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1 MVP should be?
 2 A Yes.
 3 Q At the bottom of the first page of
 4 Exhibit 114, there appears to be an e-mail from Jairaj
 5 that says, "Decision made. We're going sticker pack
 6 flow."
 7 A Yes.
 8 Q Do you see that?
 9 A Yes.
 10 Q Was that true? Was the decisions -- was
 11 this when the decision was made to go with sticker pack
 12 flow?
 13 A I don't think so. I don't think -- there
 14 were still discussions that were made later on because
 15 this is the beginning of May. But I can't really
 16 recall that specific statement.
 17 Q Okay. Then the e-mail above that, do you
 18 see there's an e-mail from Eran Ben-Ari to a group of
 19 people?
 20 A Yes.
 21 Q Including you?
 22 A Uh-huh.
 23 Q And it says, "Hi all. I took the liberty
 24 to write up a short spec for the MVP." Do you see
 25 that?

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1 A Yes.
 2 Q Did Mr. Ben-Ari draft up a short spec for
 3 the MVP?
 4 A I gather he did.
 5 Q I'm showing you an e-mail that said that.
 6 A Yes.
 7 Q Do you remember him being the person who
 8 drafted up a short spec?
 9 A I know he was driving the process. And
 10 based on this e-mail, I would say yes. Do I
 11 specifically recall? I know he was responsible for the
 12 initiative.
 13 Q Okay. And then, at the top, there's an
 14 e-mail from Ted Livingston. Do you see where it says,
 15 "Looks great Eran"?
 16 A Yes.
 17 Q Do you see that?
 18 A Yes.
 19 Q And it reads a little more, "Only comment
 20 from me is that I think we will need more tiers,
 21 perhaps from \$1 worth to 10 million worth with a tier
 22 for these amounts and amounts in-between. That way,
 23 there is real use in buying 10 million worth."
 24 Do you see how I said that?
 25 A Yes.

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1 Q Was this discussing, like, different tiers
2 where you get different stickers?

3 A Yes.

4 Q Do you feel that there's a real use in
5 buying \$10 million worth of tokens to get different
6 stickers than other people are getting?

7 A 10 million would obviously be a lot. But
8 I'm just trying to recall. At the time, there were
9 certain and various other applications people had spent
10 a tremendous amount of money for something that was
11 really unique. And for me, I don't understand it, but
12 that does happen.

13 Q Were the Kik stickers unique?

14 A Yeah, some of the Kik stickers were unique.

15 Q And so only one person got the sticker,
16 that was the only thing?

17 A Yeah. You could have -- I don't think that
18 was the case here because -- but you could have
19 situations where you would have one sticker at a very
20 high price. I mean, the equivalency of it is not
21 digital. A friend of mine was in the chocolate
22 industry. They did a specific chocolate and someone
23 paid \$15,000 for it.

24 Now, you and I would look at that and we
25 would question it. And I think in the digital world

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1 especially, some digital assets are worth a lot of
2 money for certain people. And I can't -- I'm not at an
3 age that relates to that, but that does happen in this
4 type of ecosystem.

5 Q What? Where?

6 A That people would buy something of extreme
7 value.

8 Q What type -- you said some type of
9 ecosystem. What ecosystem does that happen?

10 A Well, like in games, it happens when --

11 Q What games?

12 A Well, like if you take a look at World of
13 Warcraft or if you go to things like, if you recall,
14 Second Life, which was probably one of the first
15 environments that this happened, I mean, I had -- it
16 wasn't rational for me, but there were people that were
17 doing that.

18 Q How much -- in those two, how much were
19 people spending?

20 A I can't recall.

21 Q Are you aware of anybody spending
22 \$10 million for that?

23 A I don't think he's talking about 10 million
24 in terms of -- I think he's just using it here as a
25 reference point.

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1 MR. MITCHELL: Why don't we just go off the
2 record for a minute.

3 THE VIDEOGRAPHER: Going off the record.
4 The time is now 10:32 a.m.

5 (A brief recess was taken.)

6 THE VIDEOGRAPHER: We are back on the
7 record. The time is now 10:33 a.m.

8 BY MR. MITCHELL:

9 Q We have cleaned up the water spill. Did
10 you have any substantive conversations with the staff
11 about the investigation during the break?

12 A No.

13 Q Right. I think before the break, you were
14 talking about Mr. Livingston's comment here. And I
15 just wanted to make sure you can say that. What did
16 you -- what do you -- I think you were saying he wasn't
17 saying something or was saying something here. What do
18 you think he was saying?

19 A I think he was just implying that we should
20 have more stickers. I don't know. I can't, you know,
21 read into what Ted was thinking at the time, but I
22 don't think -- I don't know if he was saying that was a
23 specific thing, up to 10 million, but --

24 Q Sure. Do you think anyone bought -- do you
25 think there's an amount of money that -- let me start

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1 over.

2 Do you think people bought Kin tokens to
3 get access to the status and stickers in the token
4 distribution event?

5 A That would be one thing. I think a lot of
6 people, too, bought for what was going to be coming
7 down the pipe. It's like they knew what sort of
8 things, like brand missions, if you read in the white
9 paper, as to what was coming. I mean, I bought some.
10 I had just read during the period of time that some
11 dealership was selling cars for bitcoins. So there's
12 all sorts of possibilities where the token could end up
13 being used. That would be the end goal at the end of
14 the day.

15 Q Do you know anyone who bought for that
16 reason?

17 A No. I didn't talk to many people of our
18 user base that bought at the time.

19 Q But the reason you just described, do you
20 know anyone --

21 A That was my personal reason.

22 Q Oh, your personal reason. But in a
23 theoretical way, you think people may have bought for
24 that reason?

25 A Yes, for different options.

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1 Q When you think about that person, why would
2 they buy -- if they thought they wanted to use one of
3 the use cases sometime in the future, why buy Kin
4 tokens in the token distribution event?

5 A Because, for various reasons, the price
6 could go up or it could go down. We don't know. But
7 if it does go up, then it's going to be a lot more
8 expensive. So it's a bit of a hedge for a person.

9 Q So the idea is if you want to use -- if you
10 want to buy something in the future, better to get in
11 now when Kin tokens --

12 A Yeah, could be. Now, the only thing is, is
13 that -- this where you get in the complexities of the
14 ecosystem, is that, you know, we're going to be trying
15 to create an environment that keeps the currency fairly
16 stable, right, so that you don't have those
17 fluctuations we spoke about yesterday. That's part of
18 the role of the foundation.

19 There's the rewards engine. They're acting
20 like a central bank, just like in any country does.
21 Like there's supply and demand of the currency. And
22 you don't want significant peaks or valleys in the
23 currency. It makes it very difficult from a pricing
24 and transactional basis to have that type of economy to
25 be successful.

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1 Q The work you just described, who did that?
2 Did someone do that sort of in the time right after the
3 TDE?

4 A The -- do what? Sorry.

5 Q What you just described as acting like a
6 central bank, keep trying to --

7 A That's what all the work was with
8 Mackenzie, if you recall.

9 Q Right.

10 A And the reason we wanted Bill Raduchel on
11 the foundation. But as I said, you know, when the
12 investigation was announced in mid-September,
13 everything stalled, sort of.

14 Q So say in 2017, from the time of the TDE
15 until the end of the year, did the foundation -- was
16 the foundation independent and operating?

17 A No.

18 Q Okay. So did anybody do the work you just
19 described during that time period?

20 A When you say the work, you have to plan it
21 properly and understand what the issues were. That's
22 the complexity. That's why we -- we didn't have all of
23 that skill set internally. That was part of what
24 foundation was put in place. And that's part of the
25 reason why we had Bill Raduchel on the board and the

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1 reason why we hired Mackenzie.

2 Q Did people from Kik work on that issue
3 between the TDE and, say, the end of 2017?

4 A No.

5 Q No one from Kik worked on the Kik Rewards
6 Engine during that time period?

7 A From a technical standpoint. So some of
8 the complexities with the reward engine --

9 Q Yeah.

10 A -- was that you had opportunities for
11 gaming. And we wanted to -- you didn't have -- you
12 won't have those situations. So --

13 Q That was important to avoid that?

14 A It was important -- really important to
15 avoid that.

16 Q And so who works on that issue?

17 A That was where the community worked on that
18 issue.

19 Q What community?

20 A So we had advisors in that that would look
21 at it. We were working with MIT.

22 Q I'm sorry. Who had advisors?

23 A Kik did or the foundation did. We had --

24 Q I'm sorry. Who had advisors?

25 A MIT was involved.

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1 Q Who did they advise?

2 A They advised us as a group basically, Kik
3 and the foundation. But there was nobody -- the
4 foundation was set up, but there was no direct
5 agreement, I don't believe, with the foundation at the
6 time.

7 Q Kik was doing that work?

8 A Yes.

9 Q So Exhibit 114 is May 18th. I'm just going
10 to show you again. This is Exhibit 18A. It's a board
11 deck from May 23rd.

12 A I recall that from yesterday.

13 Q I'm just going to give you what I'm going
14 to mark as Exhibit 178.

15 (SEC Exhibit No. 178 was marked for
16 identification.)

17 BY MR. MITCHELL:

18 Q I'm going to, again, give it to your
19 lawyers first. Can you just flip through 178? I
20 mostly just want to ask you: Do you recognize the
21 document? What is it? And did Mr. Philp help draft
22 these board decks? So my first question is: Do you
23 recognize Exhibit 178?

24 A Yes.

25 Q Is it an e-mail from Mr. Philp to you on

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1 May 21st?

2 A Yes.

3 Q With an attachment?

4 A Yes.

5 Q Okay. So did Mr. Philp help draft the
6 board deck that we saw yesterday in 18A?

7 A Yes.

8 Q Okay. That's really all I had on that. Do
9 you remember sort of what happened -- like what
10 happened after -- just the board deck -- I'm just going
11 to show you. It has in it a description of a proposed
12 MVP as of the time.

13 A Uh-huh.

14 Q Do you remember that?

15 A Yes.

16 Q What happened -- do you remember what sort
17 of -- after this board meeting and the announcement,
18 did the MVP change from what was described there?

19 A I think that seems fairly consistent with
20 what was launched.

21 Q Okay. Do you remember anything sort of in
22 the time period after the -- after the announcement,
23 people discussing about the MVP should be or --

24 A There was discussions, but I think that's
25 what we ended up unsettling on. A lot of the issues

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1 BY MR. MITCHELL:

2 Q Okay. Other than discussions you had with
3 attorneys, was there any other reason why you had to
4 have utility?

5 A For the reasons I spoke earlier, right,
6 that we had to have it for business reasons, which
7 we've already discussed.

8 Q Okay. Those three major reasons?

9 A Exactly.

10 Q Okay. Great. What did you think of the
11 MVP?

12 A I thought it was limited, but I thought it
13 provided us to get first to market. So from a business
14 reason, it was important for -- from my end.

15 Q What do you mean you felt it was limited?

16 A Well, it had -- it didn't have the high
17 extent like as you read in the white paper all of the
18 different brand missions. And that we needed to have a
19 base that we could work from in order to get to those
20 other things.

21 Q Did you think it was like a good product?

22 A Again, I'm not a user -- a main user of our
23 system, so it's hard for me to tell. I don't buy a lot
24 of, like, digital assets in these virtual worlds or
25 anything like that, so it's not my -- I do use stickers

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1 over the course of the summer was the product, you
2 know. Like when you're building, it's a -- there are a
3 lot of intricacies in terms of how the product works.
4 There were bugs, as I mentioned earlier, and security
5 issues and everything like that that they worked on in
6 order to have it up and running for when we did the
7 TDE.

8 Q And the -- was the MVP important to the
9 timing of the token distribution event?

10 A Was the MVP -- was it important for having
11 it ready for the TDE?

12 Q Yeah. Was it related to when you -- did
13 the MVP have some relationship to the timing of the
14 token distribution event?

15 A Yeah. The MVP had to be done prior to the
16 token distribution event.

17 Q Why?

18 A Because we had to have utility in the
19 product for people to use.

20 Q Why?

21 MR. DEJARNETTE: I'm going to caution you
22 not to get into attorney/client privilege.

23 THE WITNESS: Okay. We're getting -- yeah.
24 So now we're getting into a lot of the discussions we
25 had with attorneys.

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1 once in a while to express feelings, but that's about
2 the extent of my usage. So I'm not a -- I wouldn't be
3 a person to comment on it.

4 Q Did Kik tell people about the status and
5 stickers product in the white paper?

6 A I don't recall.

7 Q Let me give you Exhibit 2 again. That's
8 the white paper.

9 A I don't see it specifically listed in here.

10 Q Do you remember it generally being
11 mentioned in there?

12 A No.

13 Q Why not?

14 A I don't know. I didn't -- as I said, I
15 didn't write the white paper at the time. So -- but it
16 was not -- I don't think that people bought for what
17 was specifically there, as I mentioned earlier, but for
18 where the thing would end up going to.

19 Q But you don't think people bought tokens in
20 the token distribution event for what existed --

21 A Solely for one --

22 Q Let me finish.

23 -- for what existed at the time of the
24 token distribution event?

25 A No, I didn't say that. I said -- I said

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1 that some people would have bought it as I did for
2 where the product would end up evolving to.

3 Q Yeah. I'm just trying to understand why --
4 if the MVP was -- there was an MVP discussed with the
5 board, why wasn't it in the white paper to sort of tout
6 to the public.

7 A I can't. And I don't -- no, I don't know.

8 Q Did you ever discuss that with anybody?

9 A We may have discussed it with counsel at
10 the time.

11 Q Again, leave out whatever you discussed
12 with counsel. Did you discuss it with anybody on the
13 business side?

14 A As I said, during that whole process,
15 outside of being updated at times with the leadership
16 committee, my whole focus was -- at that time was
17 heavily to get Cointree on side as an acquisition. I
18 was in Tel Aviv a lot. Because if we didn't have those
19 people that I mentioned earlier on side or we didn't
20 have a relationship with them or acquire them, then we
21 wouldn't be able to carry out the events that we wanted
22 to do, like the token distribution event.

23 Q Any other events?

24 A Pardon.

25 Q Anything else that you needed Cointree to

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1 platform. A lot of the things that they were doing in
2 terms of, you know, the inherent problems that existed
3 with Ethereum, right, scalability, costs, and
4 everything else, were things that we would have to work
5 on in order to end up having a product that was far
6 more viable in the future. So the -- again, the
7 equivalency is if you take a look at -- I use the
8 example to people that the internet, when you had
9 dialup, you could only do certain things. Okay? And
10 then also, when you have broadband, you could do all of
11 these other things.

12 Q Tech is wonderful.

13 A The same thing in the terms of
14 cryptocurrencies. Right now, the technology is very
15 preliminary, takes a long -- there's transactions.
16 Speeds are an issue. Cost of transactions are an
17 issue. There's questions about whether, you know, the
18 full consensus model makes sense in these types of
19 scenario or if you go to a consortium model. So those
20 are types of things that crypto -- Cointree would work
21 on.

22 Q At the time of the white paper, Kik knew
23 that the Ethereum had a scalability problem that would
24 keep it from -- keep the Kin project from running only
25 on Ethereum, right?

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1 do?

2 A Yeah. Mostly, as I mentioned, Tai was
3 really important because he understood mobile
4 cryptocurrency. That was his real strength. And
5 Lionet from the standpoint of the security with the
6 release of the tokens.

7 Q When you were doing -- when you were
8 negotiating with Cointree, was the plan that they would
9 stop work after the token distribution event?

10 A No. We were -- the original premise was
11 that we were acquiring them and they would be
12 integrated with us. What happened was they wanted to
13 pursue other initiatives even though we acquired them.
14 And we said that wasn't acceptable.

15 Q Right.

16 A And some of what they did, they told us
17 that they were launching their own cryptocurrency or
18 protocol called Orbs, right? And we felt that was
19 competitive to what we were doing. So it was a very
20 fine line that we needed them, but we weren't happy
21 with what route they were going to take because it was
22 competitive to what our long-term plan was --

23 Q What work did you expect Cointree to do
24 after the token distribution event?

25 A -- to continue working on furthering the

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1 A Right. But the assurances we got from Tai
2 at the time, I understood that he felt we didn't have
3 to worry about that for at least a year and a half.
4 Okay?

5 Q Why?

6 A Because he felt that we would have the
7 transaction volumes, and that would be the Ethereum
8 network be able to handle that. The problem is, is
9 that it's a public network. And so what happened in --
10 I believe it was November, December, CryptoKitties came
11 up. I'm not sure if you're familiar with that.

12 SPEAKER: We've had a lot of testimony
13 about CryptoKitties.

14 BY MR. MITCHELL:

15 Q We've actually -- yeah. We've discussed it
16 in here before.

17 A Okay. So that sort of showed what happens
18 when you have that type of volume and how limited the
19 system really is.

20 Q And so Kik has moved the Kin project to a
21 fork of the Stellar blockchain?

22 A Yes.

23 Q And Kik -- and did the Cointree folks help
24 with that?

25 A Quite frankly, I don't know if they were

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1 involved to that extent. That was already a part where
2 things were getting a little bit rocky between the two
3 companies. I'm just trying to think timing-wise.

4 Q Who did do that work?

5 A It was done in Tel Aviv. So from our end,
6 there's a fellow by the name of Oriban down in Tel Aviv
7 that I believe is one of the lead technical people now.
8 And so what happened is --

9 Q Sorry. Oriban works for Kik?

10 A Yes. He's in Tel Aviv. I'm not sure who
11 in the Tel Aviv team was responsible for certain
12 aspects, you know, during this period of time, because
13 Cointree was involved and --

14 Q That work was done by Kik's Tel Aviv team?

15 A Yes.

16 Q Okay. Just coming back to the white paper,
17 just sitting here today, are you surprised that the
18 MVP, the idea of status and stickers isn't mentioned in
19 there?

20 A No, not really.

21 Q Why not?

22 A Because people -- I wasn't -- you know,
23 there's -- I wanted to know that I had some utility and
24 I have a use for the product as we go forward. That's
25 what this was doing. If I was a Kik user and I'd used

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1 MR. MURTHA: Earlier, you -- and just now,
2 you're discussing with Mr. Mitchell a topic of whether
3 or not stickers were included as one of the examples of
4 use cases in the white paper, Exhibit 2, right?

5 THE WITNESS: Yes.

6 MR. MURTHA: And I think earlier, when you
7 were asked why the stickers were not included in the
8 white paper, I think you alluded to the fact that you
9 couldn't talk about that because it might have involved
10 conversations with lawyers; is that right?

11 THE WITNESS: Yes.

12 MR. MURTHA: And when we look at Exhibit 2,
13 the white paper, we see that stickers ultimately were
14 not included as a use case in the white paper, right?

15 THE WITNESS: Right.

16 MR. MURTHA: What lawyers did you have
17 conversations with?

18 THE WITNESS: That would have been -- the
19 conversations would have been with Eileen, our in-house
20 counsel, and then with Cooley's.

21 MR. MURTHA: And so these conversations are
22 taking place in May. Was Eileen around then?

23 THE WITNESS: No. These are not
24 conversations that would happen in May. I'm talking
25 about these were conversations, because he asked me as

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1 Kik points before and I'd used that, all I am looking
2 at now is a currency of points that is more valuable.
3 One of the reasons why I don't think points went is
4 because there wasn't real value outside of the Kik
5 system for the currency that I was earning. That's
6 what this was doing.

7 Q So the use -- I think you're looking at one
8 of the use cases; am I right?

9 A Yeah.

10 Q That's Kik points.

11 A That's Kik Points. But this earn and
12 redeem aspect was something that we had already built
13 before, right? And now, all I'm doing is we're
14 taking -- instead of having Kik Points, we're using a
15 currency for doing the same thing. So if I was a Kik
16 user that had used Kik Points before, Kin would be the
17 same thing. I'm just replacing it with another value
18 exchange.

19 Q Did the white paper say that people would
20 be able to earn and redeem Kik Points in the app at
21 the -- as soon as they bought the tokens?

22 A I don't -- I'd have to read the white paper
23 right now. I don't believe so, but I'd have to read
24 through it.

25 Q Okay. That's fine.

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1 to -- I think it was up to the TDE, like did it change,
2 and what happened in the product at that time.

3 MR. MURTHA: So I think I'm talking more
4 specifically about why stickers were not included as a
5 use case in the white paper. And I think you just
6 testified that they -- you weren't able to tell us why
7 they weren't included because that might touch upon
8 conversations you had with counsel; is that right?

9 THE WITNESS: Some of it would be, yes.

10 MR. MURTHA: Okay. And my question is:
11 What lawyers?

12 THE WITNESS: It would have been -- at the
13 time, it would have been Cooley's.

14 MR. MURTHA: Okay.

15 THE WITNESS: So we had two counsels there.
16 We had Nancy and we had Marco Santori. And then Eileen
17 wasn't around at that time. Those were discussions
18 that would have been later.

19 MR. MURTHA: So it's just lawyers from
20 Cooley?

21 THE WITNESS: Yes.

22 BY MR. MURTHA:

23 Q There's some part of -- sorry. The
24 question is: Do you know why this -- why the status
25 and stickers -- a product wasn't in here? Is there

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1 some part of that that doesn't involve lawyers? Some
2 part of that -- were there discussions about that that
3 didn't involve lawyers?

4 A I can't recall.

5 MR. CADIGAN: Do you recall any
6 conversations with counsel regarding the inclusion
7 specifically of status or stickers, the inclusion of
8 that in the white paper?

9 THE WITNESS: Yes.

10 MR. CADIGAN: Do you recall discussions --

11 THE WITNESS: Yes. Oh, about inclusion of
12 that on the white paper?

13 MR. CADIGAN: Yes, specifically of status
14 or stickers in the white paper with attorneys.

15 THE WITNESS: No.

16 MR. CADIGAN: So you don't recall any such
17 discussions with counsel on that topic?

18 THE WITNESS: No, because I wasn't
19 really -- as I said earlier, I wasn't involved with
20 detail in the white paper. I was just editing it
21 mostly.

22 BY MR. MURTHA:

23 Q Yeah. Let me just move the question
24 slightly away from the lawyers. Do you remember any
25 conversations with anyone about the idea of either

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1 including or not including the status and stickers MVP
2 in the white paper?

3 A No.

4 Q I'm going to give you what I will mark as
5 179.

6 (SEC Exhibit No. 179 was marked for
7 identification.)

8 BY MR. MITCHELL:

9 Q This is a one-page e-mail, KIK_00103267.
10 Take whatever time you need. My question is going to
11 be: Do you recognize this document? My first question
12 is going to be: Do you recognize the document?

13 A I don't recognize it, but I -- obviously, I
14 was copied on it, so --

15 Q It's an e-mail from Eran Ben-Ari to you and
16 some other people at Kik?

17 A Yes, it is.

18 Q At the bottom of the -- there's an e-mail
19 at the top which is dated June 10th. And then the
20 lower part that appears to be dated June 5th, do you
21 see that?

22 A Yes.

23 Q In the June 5th part, do you see it says,
24 "Below is a link to the spec I wrote a few weeks ago"?
25 A Yes.

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1 Q Do you understand that to be the spec for
2 the MVP?

3 A Yes.

4 Q It says, "This was approved by Nancy and
5 later used as the basis for what Jairaj implemented
6 within Kik." The Kik there is the messaging app?

7 A Yes.

8 Q And is that sentence true?

9 A Yes, I guess so. Yes.

10 Q Okay. Then there's a part that's AFAIK,
11 which I had to figure out. I think it means "as far as
12 I know."

13 A I don't know what that means, but I --
14 okay.

15 Q Okay. For you and me, we just --

16 A Let's assume that, yes.

17 Q We just threw a bunch of stuff -- then he
18 wrote, "We are now waiting for the stickers from Phil
19 and Elan." Leaving aside what the acronym means, is it
20 true that at that point in time in June, you were
21 waiting for stickers from Phil and Elan?

22 A I can't recall, but I guess that's what
23 this says, yes.

24 Q That's what it says. If you don't recall,
25 that's fine. The next sentence says, "This definition

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1 was written for one purpose only, compliance. This is
2 not an MVP for product purposes nor to satisfy any good
3 user experience for crypto participants. We discuss
4 that once we integrate Kin into Kik, we will rebuild
5 the entire product bottom up, and the MVP will not be
6 used in any way." Do you see where I read that?

7 A Yes.

8 Q Was that true?

9 A It was true from his standpoint. It wasn't
10 my objective.

11 Q Did you talk to him about that?

12 A Yeah. We discussed it a lot. There's a
13 lot of conflict all the time between business and
14 product people.

15 Q Okay. So tell me about those
16 conversations.

17 A Those conversations generally is that we
18 needed to have a product out there. And it wasn't only
19 for compliance. We had to go out and start the -- we
20 had to be first to market versus others, like we were
21 already, as I mentioned yesterday, behind some of the
22 BAT token. We wanted to be ahead of the game, just
23 like we were with bots, ahead of Facebook. There was a
24 major rush at that point in time. And there's always a
25 tension between product and business people.

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1 Q So what you just described, that was
2 your -- that was your --

3 A That was my --

4 Q -- your belief as to what the purpose was?

5 A Exactly. Yeah. And compliance was
6 obviously also a thing. We wanted to be compliant, so
7 that was definitely a factor.

8 Q Did Mr. Ben-Ari agree with you?

9 A No.

10 Q Did Mr. Ben-Ari believe that -- as far as
11 you understood, did Mr. Ben-Ari say to you that the
12 definition was written for compliance?

13 A Outside of this e-mail, I think we had one
14 or two conversations about it in the leadership
15 discussions.

16 Q What did Mr. Ben-Ari say?

17 A I can't really recall. He was like -- as I
18 mentioned the other day, his process and his -- you
19 know, how he delivered product was a lot different than
20 how we delivered historically in the business, like we
21 were far more lean, get the product out there, see how
22 it works, and then iterate upon it. That was not his
23 product philosophy.

24 Q Was that the conflict that he was having
25 about this?

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1 A That was -- yes, that was some of the
2 conflict that I think -- I don't know exactly, but I
3 think that was part of what led to his eventual -- you
4 know, he was no -- you know, when he, I guess, left the
5 company sort of in November or December of that year.

6 Q When he left, one of the issues was that he
7 had a tension with other people in the company about
8 how to design products?

9 A Exactly, and develop products.

10 Q This specific issue of -- the idea of
11 why -- what was the purpose of this MVP, did you
12 discuss that at the leadership, in leadership
13 conversations?

14 A We discussed it at leadership -- as to what
15 the discussion was evolved to, I can't really recall,
16 but it was a discussion that I felt it went beyond. It
17 wasn't just compliance. We had to be out first to
18 market. And we also had to prove our technology.

19 Even in this case, the development of this,
20 we had plans, you know, in the original documents you
21 showed me that we would be out in July. Okay? The
22 fact that it took two, three months to get, tells you
23 how complex the product is.

24 Q That's proving the technology?

25 A Exactly.

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1 Q Sure. And so did you do anything to
2 influence the MVP to make sure that it was
3 demonstrating technology that you thought was
4 important?

5 A No. As I said earlier, I wasn't involved
6 in that -- at that level in the product side.

7 Q Who did that?

8 A That was -- that would have been -- as I
9 mentioned earlier, that would have been Ted, Elan. I
10 don't know if Dany was involved in that part of it.
11 Jairaj. Those are the people that were involved.

12 MR. MURTHA: When you're using the word --
13 we went over this yesterday a little bit. I think
14 there was sort of two different uses for the word
15 "product" that we're talking about. There was product
16 of the Kin token and there was the product of the MVP,
17 I think, that we're talking about right now. So when
18 you're saying it took two to three months to develop
19 the product, are you talking about just specifically
20 the MVP or are you talking about also, you know, the
21 creation of the Kin tokens themselves?

22 THE WITNESS: More the MVP. So as an
23 example, like if -- the way status levels would be
24 released, okay, that that was secure, as an example, so
25 that that part of the technology, something like that,

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1 could be used in -- would be used in levels, let's say,
2 with brands and that sort of thing, as people acquired
3 certain status. Like those are very -- require a lot
4 of security and subject to hacking.

5 As we -- as I mentioned earlier, we had a
6 hack on it. So those are the types of technology
7 that's involved. You're dealing with equivalency of
8 cash and currency which has value. And so you have to
9 be very careful. It's no different than a bank is.

10 MR. MURTHA: I think you had also testified
11 that there was security issues around the actual
12 distribution of the tokens themselves as well, right?

13 THE WITNESS: Yes. That is, yes.

14 MR. MURTHA: So was -- from a security
15 standpoint, was Kik ready to proceed with an ICO in
16 July in terms of distributing the tokens to
17 distributors?

18 THE WITNESS: I don't know about that
19 level. That's getting into technology of the actual
20 distribution. We didn't -- Kik in and of itself know,
21 that's why we needed Cointree. Okay? That's where
22 Lionet comes in.

23 BY MR. MITCHELL:

24 Q Okay. I'm going to ask you a question that
25 may -- that your answer may be privileged. I want you

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1 to -- I'm going to ask you a question and I want you to
2 wait for Brett.

3 In exhibit -- so we were just discussing
4 Exhibit 179. Why did -- is the Nancy in that e-mail
5 Nancy Wojtas?

6 A Yes.

7 Q I want you to wait until he talks.

8 Why did Nancy Wojtas approve the spec for
9 the MVP?

10 MR. DE JARNETTE: I'm going to caution you
11 not to get into attorney/client privileged
12 communications.

13 THE WITNESS: Okay.

14 MR. DEJARNETTE: To the extent you can
15 answer without getting into those communications, you
16 can answer.

17 THE WITNESS: No. It would get into those
18 areas.

19 BY MR. MITCHELL:

20 Q Okay. That's why I asked it that way. Was
21 there -- I'm looking to see if there was some business
22 approval; in other words, a nonlegal -- there's some
23 communications that were nonlegal. Was there some
24 nonlegal advice that Kik was getting from Ms. Wojtas
25 about the spec?

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1 A No.

2 Q Okay. All right. So this is June 10th.
3 At this point in time, the plan was still that the MVP
4 needed to be in effect before the tokens could be
5 distributed to the public?

6 A Sorry. Say that again.

7 Q Let me start over. Earlier, I think we had
8 discussed the idea that Kik planned to do the token
9 event -- distribute tokens to the public after it had
10 implemented this MVP; is that right?

11 A Yes.

12 Q Is that right?

13 A Yes.

14 Q Okay. This is June 10th. Was that true
15 around that time?

16 A Yes.

17 Q Was there any time after that when Kik
18 considered changing the timing of the public sale?

19 A Sorry. Repeat the question one more time.

20 Q Was there a time after this or --

21 A After June?

22 Q -- After June 10th or after the
23 announcement, when Kik considered changing the timing
24 of the public sale and not doing it once the MVP was
25 available?

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1 A I don't believe so. It was when the MVP
2 would be available that we had planned to go to market
3 with the product.

4 Q Was there ever a discussion about changing
5 the timing of when you went to market and setting the
6 timing based on some other event other than the MVP?

7 A I can't recall. I don't think so, but I
8 can't recall.

9 Is it possible to take a break soon, a
10 washroom break?

11 MR. MITCHELL: Absolutely. We're going to
12 go -- let's go off the record.

13 THE VIDEOGRAPHER: Going off the record.
14 The time is now 11:05.

15 (A brief recess was taken.)

16 THE VIDEOGRAPHER: We are back on the
17 record. The time is now 11:19 a.m.

18 BY MR. MITCHELL:

19 Q During the break, did you have any
20 substantive conversations with the staff about the
21 case?

22 A No.

23 Q Okay. So before the break, I think we were
24 talking -- there was a -- I had a question of was there
25 some point in time where people at Kik discussed

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1 changing the time of the public token distribution
2 event from timing it with the -- once the MVP was
3 available and just changing the timing to, you know,
4 basically wait until something else had happened?

5 A And I said I didn't recall.

6 Q Didn't recall. Okay. Do you remember
7 about any board meetings after the public announcement?

8 A Yeah, we had numerous board meetings after
9 the public announcement.

10 Q Okay. Was there a meeting like mid-June,
11 early June? Trying to see what you remember.

12 A Quite likely, because it was during -- we
13 were conferring with the board quite a bit during that
14 time.

15 Q All right. I'm just going to give you
16 what's already been marked as Exhibit 156. That sort
17 of places us in time. Exhibit 156 is an e-mail that on
18 the top e-mail says it's an e-mail from you on
19 June 12th to some people, Bates number KIK_00001840
20 through 842. Yeah, take whatever time.

21 My first question is just going to be: Is
22 this an e-mail that you sent?

23 A Yes.

24 Q Are you forwarding an e-mail below from a
25 woman Michelle Dent?

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1 A No. Michelle Dent is just an assistant.
2 She would have sent -- I don't know why it's done. I
3 can't recall why it's done in that way, but she's
4 sending it on behalf of me.
5 Q Sorry. So the thing we're actually holding
6 is an e-mail from you that forwards below an e-mail
7 from Michelle Dent?
8 A Right.
9 Q Okay. You asked Ms. Dent to send that
10 e-mail and then forward --
11 A Yes.
12 Q Okay. And I'm just using this to sort of
13 refresh your recollection that there was a meeting
14 around June -- this is June 12th.
15 A Yes.
16 Q That there was a meeting around this time.
17 A Yes.
18 Q Okay. So do you -- I'm going to give you
19 also what's already been marked as Exhibit 28.
20 A Okay.
21 Q Do you recognize Exhibit 28?
22 A Yes.
23 Q Is that the board minutes for a June 13th
24 meeting?
25 A Yes. Yes.

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1 Q Okay. So I'm literally trying to use this
2 to see if you -- if this refreshes your recollection.
3 Do you remember -- was there a discussion -- do you
4 remember any discussion around this -- at this meeting,
5 around this meeting, about possibly delaying the public
6 sale past the time that Kik had an MVP in place?
7 A Can I just read this?
8 Q Oh, yeah, please.
9 A There's nothing with delaying the --
10 Q I'm sorry. Yeah.
11 A Sorry. What was your question again?
12 Q Yeah. I don't see -- I don't see anything
13 written here. I'm asking was there a conversation at
14 this meeting around this -- do you remember any
15 conversation about the idea of possibly timing the sale
16 on something other than the MVP?
17 A I don't recall.
18 Q Okay. Just small things. At the bottom of
19 28, do you see there's a discussion -- there's a line
20 that says -- there is a paragraph about private
21 placement memorandum, SAFT, and fundraising?
22 A Yes.
23 Q And it says -- there's a discussion with
24 Mr. Heinke advising the board about something. And he
25 said he reviews the proposed purchasers and noted

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1 meeting schedule the following week with Polychain
2 Capital and Brian Kelly Capital Management?
3 A Yes.
4 Q Polychain, that's --
5 A Olaf. And I now recall seeing it here who
6 Brian Kelly was. He -- I did have a meeting with him,
7 now I remember. He wrote a book on blockchain and
8 bitcoin or something. I can't remember what it was.
9 And I remember him giving us a copy of it.
10 Q Where did you meet him?
11 A We met him in New York, at his office.
12 Q At some point after this board meeting?
13 A Yes, it would have been.
14 Q Okay. I'm going to -- let me just take
15 this back from you. And then, just to show you, on
16 Exhibit 156, in the e-mail that Ms. Dent sent on your
17 behalf, did she send the board copies of the SAFT and
18 private placement memo?
19 A Yes.
20 Q Did you review those documents while they
21 were being drafted?
22 A Yes.
23 Q Probably come back and ask you about that
24 in a little while. Did she also send a Kin legal risk
25 assessment memo that Cooley had provided?

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1 A Yes.
2 Q Do you remember discussions in this June
3 time period about possibly -- sorry. In this time
4 period, what was your expectation for when the public
5 token event would happen?
6 A I think it was still -- so we're talking
7 in --
8 Q Say early -- in June.
9 A I think it was still probably the same time
10 frame, July, August.
11 Q Okay. Do you remember conversations at
12 this point with anybody about delaying the sale past
13 that?
14 A The only reasons that I recall right now is
15 the delays were driven in large part before product
16 bugs and that sort of thing. The product wasn't ready.
17 Q What about discussions about delaying it
18 because you wanted to time it to something other than
19 the MVP?
20 A There was some discussion probably to,
21 like, what were the options of delaying and what the
22 implications were. But as I said, I think when we
23 looked at all of the options, getting time -- time to
24 market, being first was really critical.
25 Q Okay. Tell me about those discussions that

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1 you remember.

2 A We had discussions internally, like what
3 happens if we delay the product more. And like Eran --
4 when Eran had the discussion about building more
5 functionality in the product and delaying it beyond
6 that, that was something that was discussed, but I
7 think for the reasons I just spoke about earlier and
8 yesterday also. From my end, I wanted to get out with
9 the project as soon as we could.

10 Q And were you the decision maker about that?

11 A No.

12 Q Were you the only person who discussed that
13 with Mr. Ben-Ari?

14 A No.

15 Q Okay. So tell me more. Who was involved
16 in this discussion?

17 A Most of the leadership team would have been
18 involved. And then we would, you know, talk to them --
19 talk to people out there, like our presale investors,
20 because they were investors in the -- effectively in
21 the token distribution event or in the coin.

22 Q Who are you -- who do you -- who are you
23 thinking of there?

24 A I think the biggest person we probably
25 talked to would have been, like, Dan Morehead. He was

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1 the largest investor in the presale.

2 Q So let me take you back to the internal
3 discussions, and then we'll come to Mr. Morehead.

4 A Yes.

5 Q What was the internal discussion that
6 you're remembering?

7 A I think we had sort of told people that
8 we'd be doing it in July. And so anytime you have a
9 change to some event like that could be a concern with
10 investors and everybody else. So that was probably
11 part of the discussion. But other than that, I can't
12 really specifically remember.

13 Q Was there a discussion internally, though,
14 of timing the sale to something other than the status
15 and stickers, MVPs integration?

16 A Such as?

17 Q Such as some other event, such as some
18 other product or some other event, timing it to that?

19 A Outside of the fact like Eran has written
20 like having other functionality in the product, no.
21 Those were sort of the main things.

22 Q So one idea was time the public sale to the
23 stickers and status MVP?

24 A Yes.

25 Q And what was the other idea that was

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1 discussed?

2 A The other idea was to build more
3 functionality into the product.

4 Q Before the public sale?

5 A Yes.

6 Q So were there people on both sides of that
7 idea?

8 A Yes.

9 Q So take me through the management -- take
10 me to leadership. Who was on what side?

11 A Sorry. When you say what side, what do you
12 mean by that?

13 Q We just described two different ideas. Did
14 some people support one and some people support the
15 other?

16 A I can't recall who supported one versus the
17 other, but there was a tension, as I described
18 yesterday, about being first to market. And the
19 business aspects of that were really important in order
20 to garner, like, interest level from various brands and
21 that sort of thing.

22 Q What was that in tension with?

23 A What was that? Sorry.

24 Q What was that in tension with? You just
25 said there was a tension.

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1 A Oh, the tension was with getting a product
2 with -- at the MVP status and that being enough to get
3 brands involved at that point versus having a product
4 that had way more functionality. Again, this is what
5 we talked about yesterday about the differences in
6 philosophy between what Eran's style of product
7 development was and what our business style was, which
8 is follow sort of lean management, you know, side of,
9 you know, product development and evolution.

10 Q So was there a discussion about which of
11 these two options Kik should follow?

12 A Yes.

13 Q And did someone make a decision?

14 A Eventually, a decision would be by Ted, and
15 then Ted would propose it to the board.

16 Q Okay. And so was Ted -- did Ted at some
17 point -- or did the leadership group at some point
18 consider waiting on the token sale until they had a
19 product that had more features the way that you're
20 describing?

21 A It wasn't only features at the time. The
22 other issue we had concerns about was Ethereum. As I
23 mentioned earlier, Tal, who was sort of our -- from
24 Cointree's standpoint had the expertise, felt we
25 wouldn't have a problem for at least a year and a half

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1 with scalability.

2 Q But people on the leadership team discussed
3 whether to go time with the sale to the status and
4 stickers MVP or to some other type of product?

5 A Yeah, there was discussion on that basis.

6 Q Tell me who -- tell me about that
7 discussion. I'm just trying to understand what people
8 we're talking about.

9 A I can't really recall specifically. I can
10 tell you that that was the tone of the discussion as to
11 what was discussed in the meetings exactly at that
12 time. I don't recall.

13 Q Okay. And at some point, Mr. Livingston
14 decided to go -- at some point, Mr. Livingston made a
15 decision about when to do the TDE?

16 A Yes.

17 Q So then tell me -- you said you had a
18 conversation. Did you have a conversation with this
19 issue with Mr. Morehead?

20 A Yes.

21 Q Did you have a conversation about this
22 issue with anyone else outside of Kik other than
23 Mr. Morehead?

24 A Not that I can recall.

25 Q So tell me about the conversation you

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1 you need, but I'll start again with: Do you recognize
2 the document?

3 A Yes.

4 Q Do you recognize this?

5 A Yes.

6 Q Is this an e-mail you sent to
7 Mr. Livingston?

8 A Yes.

9 Q And were you forwarding an e-mail that
10 Mr. Morehead had sent to you and Mr. Philp?

11 A Yes.

12 Q And the person in the CC line, is that an
13 employee of Pantera Capital?

14 A I believe so, yes.

15 Q So does this refresh your recollection
16 about the timing of your conversation?

17 A Yes.

18 Q So the conversation you were thinking of
19 before, was that about around June 15th, 2017?

20 A Yes.

21 Q Okay. So what did you -- sorry. Who was
22 involved in the conversation with Mr. Morehead?

23 A Tanner and I.

24 Q Were you on the phone or in person?

25 A You know, honestly, I can't recall. I

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1 remember with Mr. Morehead.

2 A Well, the TDE, when we did the presales, we
3 thought we would do the TDE around July. And then we
4 weren't doing it in July. So, obviously, July, August
5 anyways, the investors would like to know why it's
6 taking longer. So we had the discussion with him
7 that -- we had various product bugs and everything
8 else. And, you know, I think we discussed with him
9 what if we delayed it into the first quarter.

10 Q I'm sorry. The conversation you remember
11 about Mr. Morehead is this -- can you place it in time?
12 Is this before he had signed actually a SAFT?

13 A No. After. I believe it was after.

14 Q Okay. I'm going to give you what I'm going
15 to mark as Exhibit 180.

16 (SEC Exhibit No. 180 was marked for
17 identification.)

18 BY MR. MITCHELL:

19 Q Do you know when Mr. -- sorry. Did
20 Mr. Morehead sign a SAFT for Pantera?

21 A Yes, he did.

22 Q Do you know when?

23 A I don't know when exactly.

24 Q I'm going to give you what I just marked as
25 Exhibit 180. I'll start it again -- take all the time

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1 recall the e-mail. And I think we did have a phone
2 conversation with him, but I can't really recall
3 whether we did actually have a phone conversation.

4 Q You remember this e-mail back to you?

5 A Yes.

6 Q Do you remember an e-mail sent to him?

7 A No. I don't remember an e-mail sent to
8 him.

9 Q Okay. So the first line of his e-mail
10 says, "Thanks for including us in your thought
11 process." Do you see where I read that?

12 A Yes.

13 Q How did you include him in your thought
14 process?

15 A I can't -- like I said, I can't recall if
16 it was a phone call or an e-mail.

17 Q His two sort of capitalized parts, do you
18 see where it says, "Minority presale. We recommend not
19 increasing the presale"?

20 A Yes.

21 Q Had you discussed with him the possibility
22 of increasing the size of the presale?

23 A Yes. As I mentioned yesterday, we talked
24 about how the allocation should be between presale and
25 the token distribution event. And Ted was very adamant

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1 about keeping it at 50-50.

2 **Q And was there other people who wanted it to**
3 **be more than 50 percent?**

4 A Fred had talked about one time that he
5 wanted -- he thought we should go 75-25. And that was
6 some of the discussion with Fred, but we settled on
7 50-50.

8 **Q So what did you -- what was the idea that**
9 **you raised to Mr. Morehead?**

10 A We were just asking him about what if we
11 delayed, like, to Eran's question about building more
12 functionality in the product and releasing it later.
13 And this is part of -- he's sort of reiterating right
14 here what I talked about, is that being first to market
15 is really critical.

16 **Q Mr. Morehead told you that?**

17 A Yes. And as we knew, also -- like from --
18 as I said, we had -- you know, when Snapchat came out,
19 the fact that an ad agency said they bought a lot on
20 their platform was really critical. You get a lot of
21 free business advertising for your product at that
22 point in time, which attracts brands and everything
23 else. And the same thing happens here.

24 Like we get a lot of notoriety because we
25 were the first ones to launch the bot shop as opposed

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1 to Facebook. And the same thing happened here. I
2 think that's what he is referring to when he talks
3 about who is the second African-American to play
4 baseball.

5 MR. SCHLEGELMILCH: It's been on the record
6 already.

7 BY MR. MITCHELL:

8 **Q Just for the record, it was a gentleman who**
9 **played for the Cleveland Indians. Mr. Schlegelmilch**
10 **already put that on the record.**

11 A Okay. Who was it?

12 MR. SCHLEGELMILCH: Larry Doby.

13 THE WITNESS: Okay.

14 BY MR. MITCHELL:

15 **Q All right. So, I'm sorry, Mr. Morehead**
16 **told you that sort of timing was important to the**
17 **success of the project?**

18 A Yes. He felt it was, yes.

19 **Q What else did he say to you?**

20 A He said, "Here, the ICO market is hot,"
21 which actually worried me.

22 **Q I'm sorry. What did he say to you?**

23 A He says here, "The ICO market is white
24 hot."

25 **Q And then when you read that, that worried**

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1 you?

2 A Yes.

3 **Q Why?**

4 A For the same reason I spoke about
5 yesterday, I didn't want -- for us to be successful --
6 if it's an overheated market and we have a volatile
7 currency, that's a big problem, because you get those
8 swings as I discussed yesterday, and it's difficult to
9 restart an ecosystem that runs up and down and is very
10 volatile.

11 **Q What did you do -- what did you -- did you**
12 **do anything about that concern?**

13 A Well, we had already earlier discussed
14 where we talked about the fact that we put investing
15 for the presale investors. And then for the fact that
16 we did registration, we thought that would weed out
17 some of the speculative investors. And then, you know,
18 we allowed people to buy in even at a low dollar
19 amount. So --

20 **Q At this point, for a couple of minutes,**
21 **we've been talking about the second half of this e-mail**
22 **where it says ICO was planned rather than Q1.**

23 A Yes.

24 **Q Do you see that?**

25 A Yes.

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1 **Q Did you and Mr. Philp raise the idea that**
2 **Kik was considering delaying the public sale to Q1?**

3 A I can't recall if it was Q -- our Q1 is
4 actually July to September.

5 **Q What do you think that -- do you**
6 **remember -- did you tell him -- let me start over.**

7 In this conversation, did you tell
8 Mr. Morehead that Kik was just considering delaying its
9 sale to the public from, you know, what you had told
10 him in the past?

11 A Yes. So what he knew at the time was we
12 had -- he would have likely had the documents and we
13 would have had to discuss the TDE sort of in July.

14 **Q Right.**

15 A Right.

16 **Q And you told him -- did you talk to him**
17 **about potentially moving it into -- moving it back --**
18 **it says -- he writes, "Waiting six to eight months has**
19 **risks." Did you talk to him about it just so that**
20 **there was an idea of delaying it six to eight months?**

21 A I don't recall the six to eight months
22 other than in this e-mail.

23 **Q But you did talk to him about that there**
24 **was a possibility of Kik thinking about delaying?**

25 A Yes.

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1 Q And he told you that it was important --
2 timing was important to him?
3 A Yes.
4 Q And that he thought it was important to be
5 the first?
6 A Uh-huh. Sorry. Yes.
7 Q What else -- do you remember anything else
8 about this conversation, what you said or what he said?
9 A Well, he's got a couple of other points in
10 there, obviously.
11 Q What other points?
12 A Well, he says in there, if you read that
13 whole paragraph, it says, "The ICO market is white hot.
14 Waiting six to eight months has risks." So DOI was
15 concerned about that. "The market could get even
16 hotter. However, there is also a chance that the ICO
17 window closes adverse the SEC reaction. Ethereum has
18 scaling issues when projects actually go live or has
19 another DAO."
20 So on the Ethereum side, we spoke about
21 that. That's where we had discussions with Tal. And
22 he felt that scaling was not an issue. And then
23 CryptoKitties proved that otherwise. The Dow was part
24 of where -- that was all automated up front. The
25 algorithms got hacked. And that's where we had the

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1 knows so he can give you the right advice.
2 Let me ask it again, though. How did you
3 learn about this talk in the market? From what people?
4 A From Dan.
5 Q From Dan.
6 A And then from counsel.
7 Q Okay. Anybody else?
8 A No.
9 Q So tell me about the Dan side. Did Dan
10 tell you that he had heard that the SEC was working on
11 some kind of pronouncement?
12 A No. I think that was more from Nancy.
13 Q Okay. Wait. I'm sorry.
14 A Oh.
15 Q That's okay. I hear you.
16 A Sorry.
17 Q Just we're going to try to avoid that.
18 A Yes.
19 MR. MURTHA: What about -- staying with
20 Exhibit 180, what about the ICO window closing? Did
21 you have conversations about that.
22 THE WITNESS: I don't think we -- other
23 than it being in here, I don't recall the discussion at
24 that time with him on the phone.
25 MR. MURTHA: What would happen to Kik if

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1 aspects of -- we had the discussion with William to
2 sort of take that process slowly and don't put in a lot
3 of automation at the time.
4 With respect to the SEC reaction, we
5 just -- adverse reaction, I think there was already
6 talk in the marketplace that something was coming out
7 July 25th. Do you recall? Like this was now -- this
8 is in June. And that the SEC was working on some
9 pronouncement.
10 Q I'm sorry. Let me just take that for a
11 second. What was the talk in the market?
12 A That the SEC was going to make some ruling
13 or bring some announcement out on ICOs.
14 Q And how did you learn of the talk in the
15 market?
16 A I think through conversations with -- this
17 was probably the first one, or else this is getting
18 into privilege, that we know there was a lot of
19 discussion going on with the SEC on various fronts.
20 Q Okay. So don't tell me --
21 A Okay.
22 Q If someone you're about to say is Nancy
23 Wojtas or another lawyer --
24 A Yes.
25 Q -- just raise your hand and make sure Brett

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1 the ICO window closed in this if you had delayed six to
2 eight months?
3 THE WITNESS: Well, if it closed, then we'd
4 do like what we did with China, where China said
5 they're no longer valid and they shut them off, and we
6 didn't take any investments from China. So we were
7 going to be -- we weren't going to -- we didn't sell in
8 New York for the same reason, because you needed a bit
9 license in there for TDE.
10 MR. MURTHA: So there was risk that you
11 wouldn't be able to do an ICO at all if you delayed?
12 THE WITNESS: Yes. Depends again how
13 you -- our view is totally different on -- as I said
14 earlier, I always viewed this as a currency from day
15 one. That was my opinion. That's how we ran the
16 business. That's how we structured our processes and
17 everything else. So it depends on what you -- how you
18 define the product, in my mind.
19 BY MR. MITCHELL:
20 Q After you had that conversation with
21 Mr. Morehead that we were just discussing, what did you
22 do with the information he gave you?
23 A I don't think we really did anything. I
24 don't think it changed our thought process already
25 anyways.

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1 Q Okay. I'm going to give you what's already
2 been marked as Exhibit 115. Can you just make sure
3 that that doesn't have writing on it? Exhibit 115,
4 with Bates stamp Pant-000000459 to 461. And it is an
5 e-mail chain running June 15th to June 17th. When you
6 have had a chance to look at it, just let me know.

7 Do you recognize the document?

8 A I don't specifically recognize the
9 document. I recall the conversations and the process
10 here.

11 Q And if I take you to the top of
12 Exhibit 115, is that an e-mail that Mr. Philp sent to
13 Mr. Morehead, you, and -- I'm going to mispronounce his
14 name -- Paul at Pantera Capital?

15 A Yeah.

16 Q And is he forwarding prior e-mails?

17 A Yes.

18 Q Okay. And if you just turn to the second
19 page that ends in 460. Do you see down on the bottom
20 there's an e-mail from Dan Morehead?

21 A Yes.

22 Q That's the e-mail that we were just looking
23 at, right?

24 A Yes.

25 Q And right above it, is that an e-mail that

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1 you sent to Mr. Morehead and Mr. Philp and Paul at
2 Pantera Capital?

3 A Yes.

4 Q I'm going to just -- the text says, "Thanks
5 for taking the time yesterday, Dan, and sincerely
6 appreciate the advice." Does that refresh your
7 recollection about how he spent time with you or --

8 A Yes.

9 Q So how did he spend time with you?

10 A Now that I read this, I recall I guess we
11 did do a call.

12 Q Okay. All right. And that's --
13 previously, we talked about what things Mr. Morehead
14 had said to you. Did he tell you those things on the
15 call?

16 A Yes.

17 Q Okay. And then there's a paragraph that's
18 in your e-mail that says, "On the presale, we are now
19 into the 50 to \$75 million tranche. We fully agree
20 with your comments on the amount and have had internal
21 discussions about it and the effect on the community."
22 Do you see where I read that?

23 A Yes.

24 Q Okay. Was that true at the time?

25 A Yes.

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1 Q The next paragraph says, "We have a strong
2 board, and any of these decisions need to go through
3 the proper approvals. Your comments and insights,
4 along with those of people such as Olaf, will be
5 incorporated into the process." Do you see where I
6 read that?

7 A Yes.

8 Q Was that true?

9 A Yes.

10 Q What are you talking about in that
11 paragraph?

12 A That's where I mentioned earlier about the
13 discussions where Ted was very adamant about it being
14 50-50. Fred talked about a presale range of 75-25.
15 And basically, the input from Dan here and from Olaf
16 aligned with what Ted was trying to achieve with a
17 50-50 distribution.

18 Q Were you also talking about this ICO plan
19 rather than Q1 section of this e-mail?

20 A Oh, sorry, where -- oh, where he talks
21 here?

22 Q Yeah.

23 A I don't know -- in reading through this, I
24 don't know if that was -- as much part of the
25 conversation as to more the focus of this, the feedback

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1 that we had more related to the 50-50.

2 Q The size of the presale --

3 A Exactly.

4 Q -- compared to the size of the public sale?

5 A Yes.

6 Q The whole time, when -- okay. So let me
7 take back Exhibit 115 from you. So then what -- I
8 guess what happened -- you had the conversation with
9 Mr. Morehead. Did people within Kik continue to
10 discuss -- let's take first the timing of -- sort of
11 how the company should time the -- what the company
12 should time the public sale based on?

13 A Yeah. There were continued conversations.

14 Q Okay. So tell me about that. What was the
15 conversation?

16 A Well, I wasn't involved in -- as I said
17 earlier, I was not that involved with those discussions
18 because I was heavily involved with getting the
19 Cointree acquisition done.

20 Q Okay. Were you involved as a member of the
21 board?

22 A Yes, as a member of the board.

23 Q Tell me about that.

24 A We would have the discussion at the board
25 meetings. I'm sure you got some minutes to it if I'm

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1 recalling something. I don't recall offhand exactly
 2 what was discussed.
 3 **Q** Okay. The advice that -- the input that
 4 you got from Mr. Morehead, what did you do? Did you
 5 pass that on to other people at the company?
 6 **A** Quite frankly, I can't remember.
 7 **Q** Okay. So I'm going to give you what we're
 8 going to mark as Exhibit 181.
 9 (SEC Exhibit No. 181 was marked for
 10 identification.)
 11 BY MR. MITCHELL:
 12 **Q** KIK_00113490 through 93. It's a Nancy
 13 Wojtas June 14th e-mail. My first question is going to
 14 be again: Do you recognize --
 15 **MR. DEJARNETTE:** Can we go off the record
 16 for a second to evaluate this document?
 17 **MR. MITCHELL:** What do you mean?
 18 **MR. DEJARNETTE:** We just want to confirm
 19 something on our side before we go forward.
 20 **MR. MITCHELL:** The lawyers are going to
 21 talk or --
 22 **MR. DEJARNETTE:** The lawyers are going to
 23 talk.
 24 **MR. MITCHELL:** Okay. Yes. I'm happy to go
 25 off the record. I and the witness will stay here, is

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1 that the idea? I don't understand. Do you want to
 2 have a conversation with the witness or do you want to
 3 have a conversation with the lawyers?
 4 **MR. DEJARNETTE:** With the lawyers.
 5 **MR. MITCHELL:** Okay. That's fine.
 6 **THE VIDEOGRAPHER:** Going off the record.
 7 The time is now 11:51 a.m.
 8 (A brief recess was taken.)
 9 **THE VIDEOGRAPHER:** We are back on the
 10 record. The time is 11:56 a.m.
 11 BY MR. MITCHELL:
 12 **Q** During the break, did you have any
 13 substantive conversations at all with the staff?
 14 **A** No.
 15 **Q** Okay. We were looking at Exhibit 181?
 16 **A** Yes. Can I read it?
 17 **Q** Oh, yeah. Feel free. Sorry. I should
 18 have had you read it during the break. Read it. And
 19 my first question is going to be: Do you recognize the
 20 document? And you can tell me. Do you recognize the
 21 document?
 22 **A** I recall the document.
 23 **Q** Is that an e-mail from Nancy Wojtas to you?
 24 **A** Yes.
 25 **Q** What is it? What's going on here?

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1 **A** She's talking about the discussions that we
 2 had, as I mentioned, about doing a presale of
 3 75 million and 25 million versus doing a full presale
 4 at 100 million.
 5 **Q** Okay. Is her e-mail summarizing events
 6 that had happened to date?
 7 **A** Some of the events that had happened to
 8 date. I think she's also talking about other --
 9 talking about different splits between the presale and
 10 the discount structure.
 11 **MR. SCHLEGELMILCH:** Was she drafting an
 12 e-mail for you to send on?
 13 **THE WITNESS:** You know what, I can't recall
 14 that. Did I send this on to the -- I don't know. I
 15 can't remember.
 16 BY MR. MITCHELL:
 17 **Q** Let me sort of take it piece by piece. Do
 18 you see the paragraph that starts with "at the last
 19 board meeting"?
 20 **A** Yes.
 21 **Q** It says, "At the last board meeting, before
 22 Fred and Jim had to drop off the call, the proposed
 23 course of action suggested to ensure minimum risk to
 24 the company and the board in recognition of the
 25 frothiness of the cryptocurrency markets generally at

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1 this time was to conduct a \$100 million presale and
 2 eliminate the public token distribution event. The
 3 conversion of the SAFT rights into Kin would occur at
 4 the time the Kin ecosystem was fully functional versus
 5 at the time there was a minimum viable product."
 6 **A** Yes.
 7 **Q** Do you see where I read that?
 8 **A** Yes.
 9 **Q** Was that true?
 10 **A** That would be one consideration, yes.
 11 **Q** Was that discussed -- was that a
 12 possibility discussed at the June board meeting?
 13 **A** I guess so. It must have been.
 14 **Q** I'm sorry. I hear what you're saying. But
 15 just sitting here today, do you remember that
 16 happening?
 17 **A** I recall a discussion about -- as I said
 18 earlier, about the concept of going to -- I remember
 19 more of the concept of a \$75 million presale and a
 20 25 million public sale versus a \$50 million presale and
 21 50 million public sale, that I do remember the
 22 discussion about \$100 million presale. So I remember
 23 that part of the discussion.
 24 This obviously was part of the discussion,
 25 but I don't recall it specifically, because my focus

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1 was more -- as I mentioned earlier, we were looking at
 2 the discussion around 75, 25 million. And the other
 3 thing is like -- because the conversation I recalled
 4 was the one where I had mentioned earlier that Fred had
 5 suggested going 75-25 and Ted was more of the viewpoint
 6 at keeping it at 50-50.

7 So those are the conversations that I
 8 recall. This was obviously discussed in the meeting, I
 9 guess, but I don't recall them as much as I do, the
 10 discussion around the 50-50 or 75-25.

11 Q Okay. That's the second paragraph?

12 A Yes.

13 Q The second paragraph says, "During the
 14 remainder of the board call, after Fred and Jim's
 15 departure, the discussion centered on an option whereby
 16 the company would conduct a \$75 million presale and a
 17 \$25 million public TDE at the time the Kin ecosystem
 18 was fully functional."

19 A Yes.

20 Q Which would be beyond the anticipated
 21 summer of 2017 event?

22 A Yes.

23 Q Okay. So --

24 A That's more what I remember than it being
 25 potentially a full \$100 million presale.

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1 Q What Ms. Wojtas just wrote there, you
 2 remember that discussion happening at the board
 3 meeting?

4 A Right.

5 Q Okay. The next paragraph says -- sorry.
 6 Did Ms. Wojtas attend the board meetings generally?

7 A Yes.

8 Q Do you know if she attended the June 1 --

9 A Yes.

10 Q After the board -- and the next paragraph
 11 says, "After the board meeting, management has an
 12 opportunity to consider two things - whether a TDE
 13 at \$250 million, total raise of \$100 million including
 14 the presales, would maintain the integrity of the
 15 discount communicated to presale investors."

16 Do you see where I read that?

17 A Yes.

18 Q Was that true? Was that something that
 19 management had the opportunity to consider after the
 20 board meeting?

21 A Gathering from this discussion, yes, but I
 22 don't recall it, quite frankly.

23 Q Okay. Do you remember having discussions
 24 with anybody about that after the board meeting?

25 A No. I remember the conversations that I

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1 said that -- the conversations I remember were the ones
 2 that were whether it would be 50-50 or 75-25, as I
 3 mentioned to you earlier, that Fred was of the one mind
 4 and Ted was of the other mind.

5 Q Right. Right here, Ms. Wojtas is talking
 6 about a TDE of 25 million, right?

7 A Yes.

8 Q What she described there -- let me start
 9 over.

10 Did management consider after the board
 11 meeting whether a presale of 75 million and a TDE of
 12 25 million would maintain the integrity of the
 13 discounts communicated to presale investors?

14 A I guess that was the conversation. I don't
 15 recall that level of the conversation. As I said, I
 16 recall the conversation about the requirements for
 17 having 50-50 because of the -- we needed a broad
 18 distribution of the coin.

19 Q The rest of it says -- part of it says,
 20 "Management has an opportunity to consider two things."
 21 And then the text starts up after the first thing with,
 22 "Whether investors contacted already for the presale
 23 would have viewed negatively a delay in the TDE to
 24 allow the company to develop a fully functional Kin
 25 ecosystem."

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1 A Yes.

2 Q Was that true?

3 A Yes.

4 Q Okay. So tell me, did management --
 5 management had to consider that issue?

6 A Yes.

7 Q So how did management consider that issue?
 8 Is that the call you had with Mr. Morehead?

9 A Yes.

10 Q Anything else?

11 A Not that I can recall.

12 Q And the last on the next page, Ms. Wojtas
 13 just writes, "We reached out to the lead investor on
 14 the presale and talked about extending the time before
 15 the company would conduct the TDE and offered the
 16 reason why. And much to our surprise, the proposed
 17 delay was viewed adversely and would impact the lead
 18 investor's decision to participate in the presale."

19 A Yes.

20 Q Was that true?

21 A Yes, that was the conversation -- I don't
 22 recall him saying that would adversely affect his
 23 decision to invest. And I guess that must have
 24 happened. I don't recall it from the call.

25 Q What makes you think it happened then?

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1 A Because it's written here.

2 Q Okay. Anything else other than that?

3 A No. I can't recall.

4 MR. SCHLEGELMILCH: And the lead investor
5 is Mr. Morehead from Pantera?

6 THE WITNESS: Yes. He was the largest
7 investor in the presale.

8 BY MR. MITCHELL:

9 Q Do you know where Ms. Wojtas got this
10 description of the conversation with the lead investor?

11 A It was probably through the discussion we
12 had in the meeting.

13 Q What meeting?

14 A The meeting we're having here. She was in
15 the meeting, right? What she's saying, the way I read
16 this, okay, not from recall, is we had a board meeting.
17 And then afterwards, we had a discussion. And I can't
18 recall if she was in the meeting afterwards or not.

19 Q Did you talk to Ms. -- well --

20 A I would have spoken to --

21 Q Don't tell me about Ms. Wojtas. Let me try
22 to phrase the question.

23 Other than asking her for legal advice, did
24 you just give Ms. Wojtas a download of what Mr. -- of
25 your conversation with Mr. Morehead?

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1 this e-mail is that we had the board meeting. And
2 she's saying that afterwards, we had to consider these
3 two things. I don't recall whether outside of an
4 e-mail that was likely written to the board, whether
5 there was any discussion with any of the board members
6 about these issues.

7 Q Okay. I'm going to give you what we
8 previously marked as Exhibit 48. It's a June 26th
9 e-mail from DocuSign. I'm going to take the prior
10 exhibits. But if at any point you want them, just let
11 me know.

12 A Okay.

13 Q I'm just going to take 180 and 181. Just
14 let me throw it in the pile.

15 Do you recognize this?

16 A Yes. It's the board resolution regarding
17 the SAFT and the proposed token distribution event.

18 Q So the e-mail is sending along an executed
19 board resolution?

20 A Yes.

21 Q Okay. And if you turn to the back page. I
22 don't know if I did the page number. KIK_00103324 to
23 27. And on its face, it's a June 26th e-mail.

24 A Yes.

25 Q On the back page, is that your electronic

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1 A I must have, yes.

2 Q All right.

3 A Otherwise, I don't know how she would get
4 this information.

5 Q Okay. So do you know whether the text here
6 or the information in Exhibit 181 was communicated to
7 the board?

8 A Yes, I believe it was. That's --

9 Q Do you remember what -- do you remember --
10 was there any reaction -- how was it communicated?
11 What do you remember? How was it communicated?

12 A Well, I'm just assuming based on this that
13 this then went out to the -- was there not an e-mail?
14 I don't know if you have in the records here an e-mail.

15 Q I have to be honest with you. I do not --
16 I don't -- I haven't seen it, but I don't know that it
17 exists.

18 A Okay. I can't recall if this was over a
19 year ago.

20 Q Well, do you remember discussing this
21 issue -- after you talked to Dan Morehead, do you
22 remember discussing these issues with people on the
23 board or anything, anyone else at Kik?

24 A No, I don't recall discussing it, because
25 we would have had the discussion with -- the way I read

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1 signature?

2 A Yes.

3 Q So this is a board resolution that the
4 board approved?

5 A Yes.

6 Q Okay. If you go to the part that's the
7 resolution that's in the page that ends in 326. Do you
8 see that?

9 A Yes.

10 Q So do you see the second "whereas"?

11 A Yes.

12 Q Section says, "Whereas the corporation
13 proposes to offer for sale to the public an app coin
14 called Kin at such time as the Kin ecosystem is
15 functional."

16 A Yes.

17 Q Was that the corporation's proposal at the
18 time?

19 A Yes.

20 Q And then it says -- the next one talks
21 about, "The corporation requires additional funds to
22 finance and development of the Kin ecosystem and the
23 network application before sudden rollout of Kin
24 ecosystem in the development of the network
25 application."

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1 A Yes.

2 Q Did Kik need funds to do those things?

3 A Yes.

4 Q The next one says that, "It is proposed

5 that the corporation enter into SAFTs." Do you see

6 that?

7 A Yes.

8 Q And was that something that people were

9 proposing?

10 A Yes.

11 Q And then the next one was that, "The

12 corporation proposes to raise \$50 million in presales

13 pursuant to the SAFT." Was that the proposal at the

14 time?

15 A Yes.

16 Q The next one says that, "The corporation

17 proposes to raise up to an additional \$50 million in a

18 public token distribution event once the Kin ecosystem

19 is built out."

20 A Yes.

21 Q Do you see where it says that? Was that

22 the plan as of this time?

23 A Yes.

24 Q And then below that, there's a -- the

25 resolutions of what the board agreed to?

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1 A Yes.

2 Q So what is -- the paragraph that says,

3 "Once the Kin ecosystem is built out," what did that

4 mean?

5 A That means when there -- it was at a point

6 in time where the Kin currency had some element of

7 value and there was a potential for an exchange of

8 value.

9 Q What do you mean exchange of value?

10 A That I can have -- as a result of having

11 Kin, I have something that I have of -- that is of

12 value to the user that can be exchanged in an

13 environment. So in the case of the minimal viable

14 product, the aspect of holding different levels of Kin

15 would release different sticker packs, but those people

16 could then send on to other people in the ecosystem.

17 Q Sorry. So the meaning of "the Kin

18 ecosystem is built out" meant the status and stickers

19 MVP?

20 A Right. Yes.

21 Q Nothing else?

22 A At that time, yes, that was it.

23 Q And that was built out -- that meant

24 built -- that was a description of a Kin ecosystem that

25 had been built out?

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1 A Yes. That was a -- at that time, that was

2 one element of an ecosystem. It's an exchange. I

3 mean, I refer to an ecosystem as anything that I can

4 exchange value, whether it's I'm buying something, I

5 have something, and I can exchange value for that.

6 That's what I look at as an ecosystem. The question

7 then becomes how big the ecosystem is. That's a

8 different question.

9 Q But it turns -- your idea is that it turns

10 on the exchange?

11 A Yes.

12 Q So like if I exchange a token and I get a

13 pizza for it?

14 A No. I don't have to necessarily exchange a

15 token. I can exchange anything of value.

16 Q For something else?

17 A Right.

18 Q They change hands?

19 A Yes.

20 Q So in the MVP, what changed hands?

21 A The stickers.

22 Q Anything else?

23 A That was the only thing at that time.

24 Q So is that in exchange -- what was

25 exchanged? What did the two people exchange?

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1 A So I purchased an ecosystem. I purchased

2 Kin. I received a sticker status. That was an

3 exchange of value there. And then I could use those

4 stickers and send them to someone else. And that was

5 my value of a status. Okay? I could prove a status

6 out on the ecosystem.

7 Q You understood that the people who bought

8 Kin didn't have to give anything to get the stickers,

9 right?

10 A They didn't have to -- yeah, they did.

11 They had to give -- they had to purchase Kin in order

12 to get those levels and status stickers.

13 Q Okay. And so it's the -- the exchange that

14 you were thinking of is the exchange that they gave up

15 Ether, and so then they get the stickers?

16 A They gave up Ether to get the Kin.

17 Q Right.

18 A And then the Kin would release a certain

19 level of status of stickers.

20 Q And that's the exchange that you're

21 thinking of?

22 A Yes.

23 Q And you think that's all -- that was what

24 was meant here?

25 A Yes.

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1 Q And did you -- that's what you understood
2 when you signed it?

3 A Yes.

4 Q Okay. I'm going to give you what we've
5 already marked as exhibit --

6 MR. MITCHELL: We're going to go off the
7 record for a minute for him to change the tape.

8 THE VIDEOGRAPHER: This ends Disc Number 1.
9 Going off the record. The time is 12:15 p.m.

10 (A brief recess was taken.)

11 THE VIDEOGRAPHER: This begins Disc
12 Number 2. We are back on the record. The time is
13 12:17 p.m.

14 BY MR. MITCHELL:

15 Q Did you have any substantive conversations
16 during the break with the staff about the case?

17 A No.

18 MR. MITCHELL: Did you have a question?

19 MR. MENDEL: Yeah. Just a follow-up
20 question on Exhibit 48 and the paragraph stating that a
21 significant portion of the amount raised under the
22 SAFTs will be used to fund the corporation's build out
23 of a Kin ecosystem and the network application. And
24 correct me if I'm wrong, Mr. Heinke, but I thought you
25 said that you understood the build out to refer to

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1 getting back into areas of the product that were done
2 in Tel Aviv that I was not involved with. Okay? So
3 they are producing product down at that level. And I
4 was focusing on specific elements mainly relating to
5 the Cointree acquisition, was a big part of my
6 involvement at that time.

7 MR. SCHLEGELMILCH: How much was the
8 Cointree acquisition? What did Kik pay for Cointree?

9 THE WITNESS: We didn't end up buying them.
10 It went sideways. We had a letter of intent and it
11 ended up going sideways. Exactly the terms of the deal
12 right now I can't say, because we had a letter of
13 intent. And then the issue wasn't as much.

14 The discussion didn't become one of
15 actually acquiring them, but it was a question of how
16 we could work together in order to make sure that we
17 got -- had the technical expertise in order to execute
18 on the TDE. That was more my biggest concern.

19 MR. SCHLEGELMILCH: Do you recall sort of
20 an order of magnitude for the Cointree acquisition?

21 THE WITNESS: No. It was -- a lot of it I
22 think was -- at the time, there was -- it was a shares
23 also from Kik. But financially, I can't recall exactly
24 what the number was and how much we were paying them.

25 BY MR. MITCHELL:

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1 itself as the stickers and the status; is that right?

2 THE WITNESS: That was, yeah, one. Yes.

3 MR. MENDEL: So did it take a significant
4 portion of the amount raised to achieve that
5 development.

6 THE WITNESS: There was that development.
7 And there was also aspects of like we -- had we not
8 acquired Cointree, which was one of the acquisitions we
9 were looking at to build up enough technical expertise
10 in the company, to deliver -- to get the product to a
11 point that we could do a token distribution event and
12 have the product.

13 MR. MENDEL: Was there anything else
14 included in the build out?

15 THE WITNESS: At that time, no.

16 MR. MENDEL: The actual development of the
17 status and the stickers, that piece had already been
18 largely accomplished, right?

19 THE WITNESS: That was done over the period
20 of those summer months.

21 MR. MENDEL: Was a piece of that done,
22 though, before this board resolution?

23 THE WITNESS: When was this board
24 resolution? A piece of it, yes. I don't know how much
25 was done at the time. Like I wasn't -- again, you're

Page 373

1 Q The acquisition never went through; is that
2 right?

3 A No, it didn't.

4 Q And instead Kik entered into a different
5 kind of agreement where some of those people came in
6 and worked for Kik for a period of time?

7 A Yeah. Quite a few, actually. It ended up
8 working out. Because we worked jointly with the
9 Cointree team, and I think they blossomed up to, quote,
10 a number of people. I can't really recall how many of
11 them.

12 Q I'm going to give you what we've marked as
13 Exhibit 49. Exhibit 49 is a June 28th e-mail. Is this
14 also an executed board resolution?

15 A Yes.

16 Q Why are there two?

17 A I have no idea.

18 Q Is that your signature?

19 A Yes.

20 Q The second -- Exhibit 49 has Kik_00117728
21 to 30. And if you look on the last page that is 30, is
22 that your signature at the top?

23 A Yes.

24 Q Okay. Again, I'm just trying to understand
25 broadly. Why are there two --

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1 A I honestly don't know why. The only
2 difference I notice here is that certain things were
3 redacted in one and not the other. And I notice that
4 there was a description of what the MVP was
5 specifically.

6 Q Let me take it back to Exhibit 48, to the
7 second "whereas."

8 A Exhibit 48 is this one, yes.

9 Q Do you see where it says, "Whereas the
10 corporation proposes to offer for sale to the public an
11 app coin called Kin at such time if the Kin ecosystem
12 is functional"?

13 A Yes.

14 Q Look at the second "whereas" in Exhibit 49.
15 It says, "Whereas the corporation proposes to offer for
16 sale to the public an app coin called Kin at such time
17 as the corporation can introduce the MVP defined
18 below." And do you see they said -- do you see where I
19 read that?

20 A Yes.

21 Q And do you see the text under your
22 signature?

23 A Yes.

24 Q So did Kik's plan change between these two?

25 A No. I think -- if I read this, it's just

Page 375

1 further definition or probably a little more explicit
2 as to what the functionality was.

3 Q You just get that from just reading the two
4 documents?

5 A Yes.

6 Q Did you ever discuss with anyone, "Why am I
7 signing a second one of these?"

8 A No. I honestly don't recall, but that's
9 what I -- looking at this now, that would be my
10 assessment.

11 Q So you think these have no functional
12 difference?

13 A No. I don't view them as having functional
14 difference. This is just -- this is how we -- Kin
15 ecosystem is functional and this is saying what the MVP
16 is, which we defined as something of having
17 functionality, as it says here in the actual
18 description. It's a little bit -- it's being more
19 definitive to what this resolution had.

20 Q 49 is more definitive than 48?

21 A Yes.

22 Q Okay. But do you -- is there some reason
23 why more definitive language was better?

24 A I don't know. Nancy, his secretary,
25 drafted the resolution, so --

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1 Q Okay. So in her role as secretary, do you
2 know why she drafted the resolutions --

3 A No.

4 Q -- the two different resolutions?

5 A I can't recall.

6 Q Did someone ask her to do it?

7 A No, I don't recall. I don't -- this is --

8 I don't know why. But the only thing I can assume is
9 that this is further definition as to what the actual
10 ecosystem is in this resolution than there is in this
11 resolution.

12 Q Okay. But other than just reading it
13 yourself, do you have any memory or any --

14 A No.

15 Q -- did you have any conversation with
16 anyone about why there are two?

17 A No. Does she say in any of the e-mails
18 here?

19 Q I'm looking at the e-mail in 49. She
20 writes, "For your record, I'll send you another PDF
21 with the date today included as the effective date."
22 Do you see that?

23 A Yes.

24 Q Do you know what she's talking about?

25 A No.

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1 Q How long did you serve on Kik's board?

2 A Since 2000 -- when we did the A round,
3 2010.

4 Q Until 2018?

5 A Yes.

6 Q Do you remember any other time where Kik's
7 board executed two resolutions like this?

8 A I don't recall any.

9 Q Have you ever served in any other boards
10 other than Kik's?

11 A Yes.

12 Q How many?

13 A I served on Track Industries. And then I
14 served on my own private companies where we didn't have
15 board minutes and that sort of thing.

16 Q Right. The company that you served on that
17 had board minutes or board resolution, do you
18 remember -- in that company, have you ever seen -- did
19 you have any other experiences like this of two board
20 minutes?

21 A I don't recall any.

22 Q Two board resolutions?

23 A I don't recall any.

24 Q Other than your own reading of it, do you
25 have any -- do you have any other basis for thinking

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1 that these two board resolutions are talking about the
2 same plan?

3 A I think they're talking about the same
4 plan, as I said. I think it's only with respect to
5 further definition as to what she's referring to here
6 in Kik ecosystem -- Kin ecosystem.

7 Q But you think that the "such time as the
8 Kin ecosystem is functional" from Exhibit 48 is the
9 same as "such time as the corporation can introduce the
10 MVP" in Exhibit 49?

11 A Right, where the MVP is defined at the end
12 of the resolution.

13 Q But if they're identical, why would the
14 company go to the work of making a second one?

15 MR. CADIGAN: I think you've asked this
16 repeatedly. You've exhausted --

17 MR. MITCHELL: Yeah. But I really -- I'm
18 trying to make sure I don't misunderstand.

19 BY MR. MITCHELL:

20 Q Do you know why?

21 A No.

22 Q Okay.

23 A Probably for further clarity, I would
24 imagine.

25 Q Okay. Did you discuss that with anyone?

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1 bitcoin block reward is deemed as" -- "rewards in order
2 to create natural incentives for digital service
3 providers to adopt Kin and become partners in the
4 ecosystem."

5 And as I stated many times, that we had to
6 have a basis upon which that could be built on. And
7 the basis was having some exchange of value. And until
8 that was defined, we wouldn't -- and that's why I
9 mentioned to you earlier that we had to be first to
10 market, because it would attract these services.

11 You can't -- it's not a -- it's like you
12 have to have that basis there before -- we weren't
13 intending to build out all the different applications
14 that came into the ecosystem. We had to build a base
15 there that people could see if there was a
16 cryptocurrency incorporated in there, and the
17 technology worked, and there was something viable in
18 security. Those were the main elements that we had to
19 prove under the minimal viable product.

20 And from there on in, we would attract
21 other services, many of which were already on the
22 services in terms of -- in the previous ecosystems
23 using points that we had, whether it be Sony or like
24 Dunkin' Donuts or all those brands that we had at that
25 point in time. So until we had this basis built, you

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1 Did you discuss the need for clarity with anyone?

2 A No. No, I didn't.

3 Q Did you discuss any problems or issues with
4 Exhibit 48 with anyone?

5 A No.

6 MR. MURTHA: Take a look at Exhibit 2.

7 THE WITNESS: Yes.

8 MR. MURTHA: The white paper.

9 THE WITNESS: Yes.

10 MR. MURTHA: Just -- I mean, the ecosystem
11 is referenced throughout this document. Do you agree
12 with that? The Kin ecosystem is referenced throughout
13 Exhibit 2?

14 THE WITNESS: If I look at the table of
15 contents here, yes, it talks about building an
16 ecosystem.

17 MR. MURTHA: Is that ecosystem that's
18 described in being built -- described as being built in
19 Exhibit 2 different from the ecosystem that's
20 referenced in Exhibit 48?

21 THE WITNESS: It says the Kin -- sorry.
22 Under "Building an Ecosystem." Okay? "Kin Rewards
23 Engine will use economic incentives to bring other
24 digital services and applications into the
25 decentralized Kin ecosystem. Previous systems like

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1 couldn't have -- you couldn't have those other services
2 come to you.

3 MR. MURTHA: Right. Is the MVP that's
4 described in Exhibit 49 described anywhere in
5 Exhibit 2, the white paper?

6 THE WITNESS: No.

7 MR. MURTHA: Thanks.

8 BY MR. MITCHELL:

9 Q Just one more document, then we'll break
10 for lunch. I'm going to give you -- is there anything
11 else -- anything else about those two?

12 A No.

13 Q Anything else that you remember about those
14 two board resolutions that we haven't talked about?

15 A No.

16 Q I'm going to give you Exhibit 182.

17 (SEC Exhibit No. 182 was marked for
18 identification.)

19 BY MR. MITCHELL:

20 Q It's a single-page document, KIK_00113531.
21 It's an e-mail from Nancy Wojtas --

22 A Yes.

23 Q -- to you on June 20th.

24 A Yes.

25 Q Just what's going on here? What is this

Page 382

1 about?

2 A I don't know. I don't know the -- I can't
3 recall what the "Bancor is Flawed" article was about.

4 Q Do you know what Bancor is?

5 A Bancor was an ICO that I believe came out
6 of Israel, but I can't really recall what exactly it
7 did.

8 Q So did you -- did you write to Ms. Wojtas
9 that you had a discussion this morning and apparently
10 Bancor had received a call from the SEC?

11 A I must have had a discussion this morning,
12 and they -- but I'm not sure who I discussed with.

13 Q Okay. Right. And so if it's a discussion
14 with a lawyer, don't --

15 A No. This would have been a discussion with
16 someone else.

17 Q Okay. And then she wrote back,
18 "Interesting. Better make sure your MVP stands up to
19 scrutiny."

20 A Yes.

21 Q I guess I'm trying to understand. What is
22 she referring to? What do you understand she was
23 referring to?

24 A She's referring to the fact that --

25 MR. DEJARNETTE: I'm going to caution you

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1 Q All right. During the break, while we were
2 all getting organized, I gave you copies of Exhibits 4
3 and 5.

4 MR. DEJARNETTE: Can we make it --

5 MR. MITCHELL: Oh, yeah, let's do that.
6 Yeah, yeah.

7 MR. DEJARNETTE: So Kik is going to reserve
8 the right to claim attorney/client privilege over
9 Exhibit 182 upon further investigation.

10 MR. MITCHELL: Just put the Bates number.

11 MR. DE JARNETTE: Bates KIK_00113531.

12 MR. MURTHA: That'll make it easier to
13 search. Good?

14 MR. DE JARNETTE: We're good. Thank you.

15 MR. MURTHA: Did you leave before
16 Mr. Ben-Ari or after?

17 THE WITNESS: After.

18 MR. MURTHA: Do you have any understanding
19 as to whether or not he received any severance package
20 or separation agreement?

21 THE WITNESS: He had -- part of his
22 employment agreement, I believe, had a severance
23 capability in there, a severance amount that would pay
24 him out until -- I don't know if it was like a lump sum
25 or ongoing payment to, I think, a year anyways after he

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1 not to get into attorney/client privileged
2 communication.

3 THE WITNESS: Yeah. Okay. Yes.

4 BY MR. MITCHELL:

5 Q Sorry. Is she giving you -- is this
6 related to legal advice she gave you?

7 A You just asked me what the discussion was
8 with her.

9 Q Right. And I'm asking you: Is the
10 discussion -- the question I had was: What was your
11 understanding of what this meant? And so in answering
12 that, would you be discussing or sort of using legal
13 advice she gave you?

14 A Yes.

15 MR. MITCHELL: Okay. We'll go off the
16 record and break for lunch.

17 THE VIDEOGRAPHER: Going off the record.
18 The time is now 12:31 p.m.

19 (Recess.)

20 THE VIDEOGRAPHER: We are back on the
21 record. The time is 1:29 p.m.

22 BY MR. MITCHELL:

23 Q Did you have any substantive conversations
24 about the case with the staff on the break?

25 A No.

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1 was let go. So --

2 MR. MURTHA: That was just built into the
3 normal terms of his employment?

4 THE WITNESS: Exactly. I don't think it
5 was a separate agreement. He had moved all his kids
6 here and his kids will be in school and everything
7 else. That was one of the --

8 MR. MURTHA: Thanks.

9 BY MR. MURTHA:

10 Q He moved from Israel to Toronto?

11 A Yes.

12 Q Okay. I gave you before we started
13 Exhibit 4.

14 A Yes.

15 Q Is that the PPM?

16 A Yes.

17 Q The private placement memo?

18 A Yes.

19 Q Were you involved in drafting it?

20 A I didn't draft it necessarily, but I think
21 I did -- might have written some sections, but not -- I
22 don't recall really.

23 Q Who was involved in putting it together?

24 A I think a lot of people from the company.
25 I think -- but I can't really recall who wrote it at

Page 386

1 the time.

2 Q When you say a lot of people, who?

3 A Possibly Tanner would have been involved.

4 I would have been involved possibly in some sections.

5 Ted. And then counsel also helped us draft elements of

6 it.

7 Q I apologize. Can I just have your copy

8 back for a second?

9 A Yes.

10 Q I'll hand it back to you. I just brought

11 two copies. So your --

12 A No problem.

13 Q -- lawyers have one. Actually, let me just

14 start off, what was the purpose of the PPM? What did

15 you do with it? What did Kik do with it?

16 A It was for the purpose of raising presale

17 funds.

18 Q And did you give this to people who

19 potentially were interested to see if they were

20 interested?

21 A Yes.

22 Q And it laid out the terms that you had

23 planned at the time?

24 A Yes.

25 Q But the memo itself, was that -- was this a

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1 binding contract between Kik and anybody else?

2 A Between us and the presale investors. I'm

3 not sure, again, like in a legal process. Is it

4 like -- this is the memorandum?

5 Q Exhibit 5 is the SAFT, right?

6 A Right.

7 Q That is actually a document that both sides

8 executed?

9 A Yes. Exactly.

10 Q Is the PPM something that both sides

11 executed or agreed to -- to be bound by?

12 A I don't know when you say agreed to. We

13 would hand this out. I don't think we had a lot of

14 feedback from any presale investors on the PPM.

15 Q Okay. In the PPM, there is a discussion of

16 the -- I'm sorry. Page KIK_000043, do you see that?

17 A Yes.

18 Q Exhibit 4 goes from KIK_000047 to 65. And

19 I'd like you to look at page 43.

20 A Yes.

21 Q Do you see it says, "The development of the

22 Kin ecosystem"?

23 A Yes.

24 Q Okay. And then it says -- it describes --

25 it says, "The Kin ecosystem has sought to establish a

Page 388

1 global network of digital services," and it goes on

2 from there. Do you see that section?

3 A Yes.

4 Q Does this section describe the development

5 of the Kin ecosystem?

6 A Yes.

7 Q And does it -- do you see the line that

8 says, "The development of the Kin ecosystem will follow

9 four key milestone phases"?

10 A Yes.

11 Q And was that true?

12 A Yes.

13 Q And the section below, is that a

14 description of the four phases?

15 A Yes.

16 Q Below that, it says, "Initial launch of Kin

17 in the Kin ecosystem. At the time of the public token

18 distribution event, the Kik messaging application will

19 have the following functionality," then in parenthesis,

20 "the minimum viable product." Do you see it says that?

21 A Yes.

22 Q Why is that -- why was there a description

23 of a minimum viable product in the PPM?

24 A So people understood in the SAFT what

25 they -- what we were hoping to achieve prior to a TDE.

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1 Q And what, you thought that was something

2 that would be important to them?

3 A Yes.

4 Q Why?

5 A Because they would want to know what the

6 next toll gate was for the company.

7 Q The toll gate meaning what -- the toll gate

8 that the company had to get through in order to run a

9 public token distribution event?

10 A I don't know if they would be at that

11 level, but they just want to know what the product was

12 coming up. I think it was a description of what we're

13 going to have for what purposes. I don't think it says

14 here specifically, does it?

15 Q I'm sorry. I don't think I understand what

16 you're asking me.

17 A It doesn't say here specifically why we're

18 doing it. It's just telling what we're doing.

19 Q Right. It's saying that, "At the time of

20 the public token distribution event" --

21 A Right.

22 Q -- "the Kik messaging application will have

23 the follow functionality (the minimum viable product)."

24 A Yes.

25 Q Okay. And you thought that that

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1 information was something that would be important to
 2 the people who were considering whether to engage in
 3 the SAFT?
 4 A Yes.
 5 Q Okay. And I guess I'm trying to understand
 6 this. Because you thought that it -- they would want
 7 to understand what, the toll -- did you say toll booth?
 8 A The toll gate.
 9 Q Toll gate. What the next toll gate would
 10 be?
 11 A Yes. What the next step is for the company
 12 and progressing, like what's the product going to be.
 13 Q Okay. Starting on page 46 and 47, there's
 14 a description of the directors and management. Is that
 15 a description of Kik's directors and management?
 16 A Yes.
 17 Q Why is this in there?
 18 A Well, because people that would be
 19 investing in this company, Kik, at the presale level
 20 would want to know who's managing the company.
 21 Q Because who's managing it is important to
 22 their investment idea?
 23 A Yes. My understanding is that it's
 24 standard in every sort of memorandum document.
 25 Q Because people who are trying to decide

Page 391

1 what -- whether to invest or not want to know who's
 2 running the company?
 3 A Exactly.
 4 Q And then the next part was -- do you see
 5 the page that says "terms of the purchase rights and
 6 the SAFTs"?
 7 A Yes.
 8 Q So this and the subsequent pages, the next
 9 two pages, those describe the terms?
 10 A Yes.
 11 Q And so do you see it says "use of
 12 proceeds"?
 13 A Yes.
 14 Q It says, "A significant portion of the
 15 proceeds of the offering will be used by the company to
 16 achieve the minimum viable product and subsequently to
 17 build out a semi-centralized blockchain-based computer
 18 network that enables economic transactions and rewards
 19 system for digital services providers, as well as to
 20 develop an application to make the network accessible
 21 via the Kik messaging platform (the Kin ecosystem)."
 22 A Yes.
 23 Q Do you see that?
 24 A Yes.
 25 Q So was that true at the time?

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1 A At the time, yes.
 2 Q Okay. And was that -- was that a good
 3 definition of what the Kin ecosystem was?
 4 A Yes.
 5 Q If you flip over the page to the one that
 6 ends with 49.
 7 A Yes.
 8 Q Do you see it says "conversion price"?
 9 A Yes.
 10 Q Is the way that the SAFTs work that the
 11 other party gave Kik money, cash?
 12 A Yes.
 13 Q And then they were going to receive Kin
 14 based on a price which was a discounted price to the --
 15 whatever price Kik sold to the public in the TDE?
 16 A Yes.
 17 Q All right. And the discount was basically,
 18 you said, you multiply the public price by 70 percent?
 19 A Yes.
 20 Q The next part says "termination"?
 21 A Yes.
 22 Q What is this about?
 23 A These were the terms under which we had to
 24 launch the product at or launch the -- launch the
 25 product at or do the TDE. Otherwise, unless there was

Page 393

1 further negotiation, we would have to, I guess, return
 2 the money.
 3 Q Is that -- and did this kind of term end up
 4 in the SAFT? And, again, I gave it to you if you want
 5 to look at it. Do you remember whether that kind of
 6 term ended up in the SAFT?
 7 A I would imagine it is, but I'm not sure, so
 8 I'll have to take all that.
 9 Q I can make that faster. Great. I'm going
 10 to give you Exhibit 5, which is KIK_000066 to 72. And
 11 I'm going to give it open to 68. Do you see there's a
 12 "termination" paragraph there as well?
 13 A Yes.
 14 Q So I'm just trying to understand. This
 15 term of the SAFT, what did it set up?
 16 A I'm sorry. When you mean set up, what do
 17 you mean by that?
 18 Q What does this term -- what does the --
 19 what does the termination mean?
 20 A The termination --
 21 Q What does the term do, the term of the
 22 contract?
 23 A The term of the contract stipulates here
 24 that the contract will terminate earlier upon the
 25 network launch or the payment as set due to purchaser

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1 pursuant to -- and then it talks about the date, the
 2 deadline date. So if the network has not occurred in
 3 such date, provided that the company has the right to
 4 extend the deadline made by 60 in its sole discretion.
 5 So what it's saying is if we don't meet the date, we in
 6 our own sole discretion could still extend it to the
 7 further 60 days.
 8 **Q So the first date is September 30th?**
 9 **A Right. So 30 days would be November 30th.**
 10 **Q Okay.**
 11 **A 60 days. Sorry.**
 12 **Q Yes, 60 days.**
 13 **A Yeah.**
 14 **Q Okay. And so one way that the SAFT can**
 15 **terminate is if there is a network launch.**
 16 **A Yes.**
 17 **Q And that's -- a network launch is the token**
 18 **distribution event?**
 19 **A Yes.**
 20 **Q And so if that happens, then Kik delivers**
 21 **the token to the person and the SAFT expires?**
 22 **A Expires, yes.**
 23 **Q What happens -- what's your understanding**
 24 **of what happens if the date -- say the 60 days past**
 25 **September 30th happened and there hadn't been a token**

Page 395

1 **distribution event?**
 2 **A By the basis of the contract, we would have**
 3 **to turn the money back. However, there was always --**
 4 **I've been in transactions before where we'd go back to**
 5 **the original investors and negotiate an extension.**
 6 **Q If you could negotiate an extension, that**
 7 **would happen.**
 8 **A Yes.**
 9 **Q But if you couldn't negotiate an extension,**
 10 **the way that this -- the terms of the SAFT as they read**
 11 **were that Kik had to give the money back to people who**
 12 **bought in the presale?**
 13 **A Yes. Yeah.**
 14 **Q Is that right?**
 15 **A Yes. That's my understanding of it.**
 16 **Q I apologize. I'm coming around backwards.**
 17 **Were you involved in drafting the SAFT contract?**
 18 **A Only from a standpoint of reviewing it.**
 19 **Counsel drafted most of the terms in this.**
 20 **Q I'm going to just take 4 and 5 back from**
 21 **you just so that I don't lose them. Was there a point**
 22 **over the summer of 2017 that Kik increased its amount**
 23 **of D and O insurance?**
 24 **A Yes.**
 25 **Q What was the -- what was the increase?**

Page 396

1 **A What was the increase in terms of amount?**
 2 **I don't recall, but I know we increased it. And that**
 3 **was part of our standard process for reviewing D and O**
 4 **insurance on an annual basis.**
 5 **Q Who was involved in the review?**
 6 **A Normally, myself to some extent. But I**
 7 **think in this case, I think Eileen was involved. I**
 8 **can't recall exactly the date of the term, but we would**
 9 **normally get our broker in who would go through the**
 10 **different insurance levels. And we would do that on an**
 11 **annual basis.**
 12 **Q And was it Eileen -- Eileen is Eileen Lyon?**
 13 **A Right. But I don't recall if she was**
 14 **involved right at the start or not. I'm not sure when**
 15 **we started the review. I can't recall.**
 16 **Q And whatever role she had in the review,**
 17 **was her role giving legal advice?**
 18 **A Not really, because I don't think -- most**
 19 **of the advice came from the broker themselves,**
 20 **explaining what the insurances were, what risks were**
 21 **out there and everything else.**
 22 **Q So in 2017, did the broker talk to you**
 23 **about risks?**
 24 **A Yes.**
 25 **Q What did they say?**

Page 397

1 **A Well, one of the big risks in**
 2 **cryptocurrency I think we talked about yesterday was**
 3 **security over the tokens and that. And as I mentioned,**
 4 **there were a couple of issues like -- so a lot of the**
 5 **insurance companies, when they came in, the risk**
 6 **analysis, they spent a lot of time with Lionet to**
 7 **understand how we were issuing the tokens, how we would**
 8 **maintain the tokens.**
 9 **This is where you get into things like hot**
 10 **and cold wallets in terms of what's -- and so they**
 11 **wanted to see -- and we had a fairly extensive controls**
 12 **document with respect to the tokens and how we set up,**
 13 **like, having multisig wallets and then having**
 14 **distribution of the cold wallets in different banks and**
 15 **sort of security deposits and all of those sorts of**
 16 **types of procedures.**
 17 **And so the insurance company would look at**
 18 **that from the standpoint of looking to understand,**
 19 **like, what the security risk was.**
 20 **Q Okay. Separate from the -- like the**
 21 **security -- like criminal security risk, did you have**
 22 **conversation with the broker about whether or not Kik**
 23 **was selling securities in the Kin token offering?**
 24 **A I can't recall if we specifically -- we**
 25 **talked to them about aspects of -- I think he asked the**

Page 398

1 question whether we were doing at any point in time a
 2 public offering in terms of the security. And we said
 3 no. Like going public in terms of an IPO.
 4 **Q Oh, sure.**
 5 **A Right. That was not the case.**
 6 **Q Did he ask about the Kin token offering?**
 7 **A Yes, he did. And they looked at it. But I**
 8 **can't recall -- I don't know when the dates were**
 9 **exactly, so I don't recall how much I was involved in**
 10 **the ongoing discussion at that point in time.**
 11 **Q Okay.**
 12 **A Most of the --**
 13 **Q Go on.**
 14 **A Yeah.**
 15 **Q I didn't mean to cut you off.**
 16 **A That was basically it.**
 17 **Q I'm going to give you what I'm just going**
 18 **to mark as Exhibit 183.**
 19 **(SEC Exhibit No. 183 was marked for**
 20 **identification.)**
 21 **BY MR. MURTHA:**
 22 **Q See if that refreshes your recollection.**
 23 **A Andy Sloan is the broker.**
 24 **Q Andy Sloan is the broker for the -- whom**
 25 **you were discussing the --**

Page 399

1 **A Exactly.**
 2 **Q We're going to just give copies of this to**
 3 **your lawyers. My first question is going to be: Do**
 4 **you recognize this document?**
 5 **A Yes.**
 6 **Q It says KIK_00118242 to 245. What is this**
 7 **document?**
 8 **A This is a document summarizing the**
 9 **conversations that we had with Andy, but I'm not sure**
 10 **who produced the document.**
 11 **Q You made a comment on the right -- there**
 12 **was some comments on the right. Are those by you? Oh,**
 13 **sorry.**
 14 **A No.**
 15 **Q Actually, let me start over. That's**
 16 **somebody else signed to --**
 17 **A Somebody else wrote. They're asking my**
 18 **comments on --**
 19 **Q Do you know who wrote that there?**
 20 **A No, I don't know who wrote that.**
 21 **Q Did you discuss with Andy Sloan or anyone**
 22 **else at the broker whether Kik was complying with the**
 23 **Howey test?**
 24 **A Yes.**
 25 **Q What did you discuss with them?**

Page 400

1 **A He -- I think he came back and asked us a**
 2 **question about the Howey test or security. And I said**
 3 **that we were complying with what was referred to as the**
 4 **Howey test. Because I believe this is like -- the SEC**
 5 **came out -- was there not a pronouncement on the 25th**
 6 **of July?**
 7 **MR. MURTHA: There was. But this document**
 8 **has a date of June 13th at the top.**
 9 **THE WITNESS: Right. But I think, again,**
 10 **this gets into privileged conversation.**
 11 **BY MR. MURTHA:**
 12 **Q Which we do not want to do.**
 13 **A Right. So --**
 14 **Q So don't tell me about the privileged**
 15 **conversation. How was the question getting into**
 16 **privileged conversation?**
 17 **A Because the Howey test was a function of**
 18 **privileged conversation.**
 19 **Q Okay. So I don't want you to tell me about**
 20 **your conversation with the lawyers. But I do want you**
 21 **to tell me about your conversations with Andy Sloan or**
 22 **anyone from the broker. Did you talk about Howey**
 23 **analysis with the broker?**
 24 **A I actually think we had counsel for some of**
 25 **those discussions, so that gets into what I assume is**

Page 401

1 **privileged.**
 2 **MR. MURTHA: I assume counsel was at the**
 3 **meeting.**
 4 **THE WITNESS: I can't --**
 5 **(Simultaneous speakers.)**
 6 **BY MR. MITCHELL:**
 7 **Q Not privileged. It's a broker? This is**
 8 **the insurance broker who works for Magnus, Inc.?**
 9 **A Right.**
 10 **Q They're a broker --**
 11 **A If our lawyer is on some of the calls --**
 12 **MR. DEJARNETTE: If you have a question**
 13 **about whether or not these discussions are privileged,**
 14 **let's discuss it.**
 15 **THE WITNESS: Yeah, let's discuss it.**
 16 **MR. MITCHELL: That's okay. Let's go off**
 17 **the record.**
 18 **THE VIDEOGRAPHER: We're going off the**
 19 **record. The time is 1:49 p.m.**
 20 **(A brief recess was taken.)**
 21 **THE VIDEOGRAPHER: We are back on the**
 22 **record. The time is now 1:55 p.m.**
 23 **BY MR. MITCHELL:**
 24 **Q Did you have any conversations about the**
 25 **case -- substantive conversations about the case with**

Page 402

1 staff during the break?

2 A No.

3 Q Before the break, I think we were looking

4 at Exhibit 183. And we were talking about Andy Sloan

5 and Magnus, Inc. I think you had said that there were

6 discussions about the Kik selling Kin and the Howey

7 test; am I right about that?

8 A Yes.

9 Q Okay. Tell me about those conversations.

10 A He asked me if it was a security. And I

11 said our belief based on the Howey test was that it was

12 not a security.

13 Q Okay. And was anybody else involved in the

14 conversations with the broker?

15 A I can't recall.

16 Q Okay. Earlier, I think you had --

17 A I thought -- I'm not sure at some point in

18 time whether we had Nancy involved in the conversation

19 or not. I just can't recall. Or whether we directed

20 counsel to talk -- or had the broker talk to counsel at

21 the time.

22 Q Okay. So sitting here today, you don't

23 know whether those happened or didn't happen?

24 A No.

25 Q If you wanted to figure out whether they

Page 403

1 happened or didn't happen, are there any documents at

2 Kik you think you could consult with?

3 A Not likely. It would have been in an

4 e-mail, making an introduction or something.

5 Q An e-mail between somebody at Kik and Andy

6 Sloan?

7 A Yes.

8 Q Anybody -- did you deal with anybody other

9 than Andy Sloan at Magnus?

10 A There was an associate of his, but I don't

11 recall what his name was. He was -- I guess he

12 reported to Andy. Andy is sort of one of the senior

13 guys, one of the owners, I think, of Magnus.

14 Q Look on the second page of Exhibit 183.

15 There's a 6/28/2017 date. Do you see that? Do see the

16 date 6/28/2017?

17 A Yes.

18 Q Do you see to the right this person named

19 Chris Cameron?

20 A Chris Cameron.

21 Q Is that the associate you were thinking of?

22 A Yes.

23 Q Okay. And then, what is this text here?

24 A Let me read it for a second.

25 Q Sure. Is this something you think you

Page 404

1 wrote or somebody else wrote?

2 A This is from Chris Cameron.

3 Q You think this is --

4 A Oh, sorry. Yeah. But I don't know who

5 wrote this. But this looks like a commentary. Like I

6 wouldn't know about state-by-state bonds or --

7 Q That's okay. There's a discussion about,

8 "I've spoken to all of the available markets," blah,

9 blah, blah. Is that "I" you?

10 A No.

11 Q Okay.

12 A That would be Chris Cameron.

13 Q And then, over on the next page, there's

14 some action items. And the fourth bullet under action

15 items says, "Peter is concerned with a D and O

16 application as it relates to Kik, not Kin operations.

17 Review with Andy what insurers need to understand in

18 addition and where liability is."

19 Did you have some kind of concern or

20 analysis of these insurance policies about whether they

21 would relate to Kik or to the Kin, something broader

22 than Kik?

23 A No, I can't recall what that was in regards

24 to. I can't recall what that was about.

25 Q And down in the bottom of the third page,

Page 405

1 there is a chart that has current coverage column and a

2 suggested coverage column. Do you see that?

3 A Yes.

4 Q Did Kik move from a \$15 million D and O

5 policy to a \$25 million policy?

6 A I believe so, yes.

7 Q And did it keep its \$5 million general

8 liability policy?

9 A Yes.

10 Q Any other discussions with folks at that

11 brokerage about the Kin token and whether it's a

12 security?

13 A Not that I can recall.

14 Q So before the -- this is sort of a June

15 date. We had been talking about those board

16 resolutions before the break, which is sort of the end

17 of June. Going into July and August, what was

18 happening within Kik about the project?

19 A About the -- well, as I mentioned earlier,

20 most of the things that were happening from the product

21 side were happening in Tel Aviv.

22 Q Right.

23 A And, again, my focus involvement was more

24 with respect to, you know, Cointree acquisition,

25 financially related things, that sort of stuff.

Page 406

1 Q Was there discussion within the company
2 about sort of pressure to be first to market, like we
3 talked about earlier?
4 A There was probably some discussion about
5 that, yes.
6 Q So who -- was that something that
7 Mr. Livingston was concerned about?
8 A No. I think it was just a general
9 philosophy of the company to be first to market.
10 Q So everyone wanted that?
11 A Yes.
12 Q Okay.
13 A Well, to clarify --
14 Q Sure.
15 A -- we've had the discussion about Eran
16 wanting to have sort of like a way more functional
17 product rather than MVP. So that friction existed.
18 Q And let me just give you this. Exhibit 184
19 is a two-page document with the Bates number
20 KIK_00002106 and 2107.
21 (SEC Exhibit No. 184 was marked for
22 identification.)
23 BY MR. MITCHELL:
24 Q Just take a chance to read it. The first
25 question I'm going to ask you is: Do you recognize the

Page 407

1 document?
2 A Yes.
3 Q What is it?
4 A It was prior to an executive meeting, I
5 guess. From what I recall, Ted wrote this to all of
6 the various people involved in the Kin project,
7 including those people from Cointree. And he talks
8 about Kin challenges, MSB, and scalability. Can I read
9 the document?
10 Q Yes, please.
11 A Okay.
12 Q I'm going to draw your attention to the
13 second paragraph that starts "for next steps."
14 A Yes.
15 Q "For next steps, my biggest concern is
16 getting the reward engine and developer platform in
17 market ASAP." Do you see where I read that?
18 A Yes.
19 Q That's what Mr. Livingston wrote here?
20 A Uh-huh.
21 Q Sorry. I have to ask you to --
22 A Yes. Sorry.
23 Q And does that comply with sort of what you
24 remember his concerns being in the summer of 2017?
25 A I recall. But I sort of in retrospect look

Page 408

1 as to why the rewards engine was such a big piece at
2 that time. I didn't review -- I didn't look at it as
3 being -- and I think in earlier documents, he talks
4 about it as sort of down the road in terms of the
5 evolution. As I mentioned earlier, the rewards engine
6 in its complete form would be algorithmic. It would
7 all happen automatically.
8 And that was something in the -- and the
9 discussions we had with advisors, it would be really
10 difficult, largely in part due to how the reward
11 mechanism -- so it couldn't get gained. So there were
12 a bunch of different proposals and ways to be looking
13 at that. And that's where the people from Cointree
14 were also very helpful in terms of looking at that.
15 And that's where we involve people from,
16 like, MIT. There were a couple of advisors there. We
17 had an agreement with them to take a look at how do we
18 build the rewards engine.
19 Q So in the summer of 2017, you understood --
20 your understanding was that to get a full algorithmic
21 rewards engine up, that could take a significant amount
22 of time?
23 A Yes.
24 Q That you would expected that to happen
25 after the token distribution event?

Page 409

1 A Yes. Yes.
2 Q Okay. Do you think Mr. Livingston -- is it
3 your understanding that -- he's talking about a rewards
4 engine here. He's talking about something different
5 than the sort of algorithmic rewards engine?
6 A I think he's talking -- in this case, I
7 read about the daily payout and everything else. And
8 that would be an algorithmic thing probably as opposed
9 to something that would be non-algorithmic.
10 Q Okay. So leaving aside the document,
11 during this time period, sort of during the summer of
12 2017, did Mr. Livingston sort of appear to have a real
13 interest in getting the rewards engine and the
14 developer platform to market as soon as it could?
15 A Outside of this memo, I don't -- with
16 respect to the rewards engine specifically, I don't
17 recall a tremendous amount of discussion and focus on
18 the rewards engine per se at that period of time.
19 Q Okay. Do you -- the next sentence says,
20 "The reason for this is because whoever gets the reward
21 engine in market first will get developers first, which
22 will grow the value of the currency, which will grow
23 the value of the daily payment, which will lead to even
24 more developers and even more momentum."
25 A Yes. In a perfect world, that would be

Page 410

1 ideal.

2 Q Is the concept that Mr. Livingston wrote
3 about in that sentence, is that something that people
4 were discussing within the company in the summer of
5 2017?

6 A Yes. The rewards engine was being
7 discussed.

8 Q And the fact that whoever -- that the
9 rewards engine could help to draw developers and grow
10 the value of the currency?

11 A Yes.

12 Q And who -- in terms of the rewards engine,
13 who did the work on the rewards engine, you know,
14 between the summer of 2017 and the end of 2017?

15 A That was a lot of the people from Cointree,
16 like Tal and -- was heavily involved in that. I'm not
17 sure who else in Tel Aviv specifically was involved in
18 the rewards engine. I think -- sorry. Also, I believe
19 Odette was one of the key people on the rewards engine.

20 Q So leaving aside whether you know the
21 individual people, it's Kik employees in Tel Aviv?

22 A Yes -- well, no. Clarify. Odette was with
23 Cointree, so we hadn't acquired them yet.

24 Q Okay. Some of the people in Tel Aviv were
25 Kik employees; is that right, working on the rewards

Page 412

1 whether Sylvain did sort of research about any markets
2 or possibility for products or things like that?

3 A I can't recall. I wasn't involved in it,
4 so --

5 Q We will move along. Okay. At some point,
6 the public sale -- Kik announced that there was going
7 to be a public sale. Let me back up.

8 In the white paper, Kik said it was going
9 to sell a trillion Kin; is that right?

10 A Yes.

11 Q Okay. But it didn't announce then the
12 actual mechanisms for the sale; is that right?

13 A Sorry. When you say -- when?

14 Q At the time of the white paper.

15 A No, I don't think we did. I think we
16 gave -- did we not give an estimate or -- I can't
17 recall.

18 Q Leaving aside the estimate -- well, let me
19 just -- I'm going to give you what's been marked as
20 Exhibit 93. It's a press release. It on its face says
21 it's from August 29th, 2017. Do you recognize that?

22 A Yes.

23 Q Is this a Kik press release where Kik
24 announced sort of the process for the token
25 distribution event?

Page 411

1 engine? Some of them were Kik employees?

2 A Some were Kik employees.

3 Q And some were Cointree employees?

4 A Exactly.

5 Q And the Cointree employees had been hired
6 by Kik to do that work?

7 A Yes.

8 Q Have you ever heard of -- I'm going to take
9 184 back. Have you ever heard of a company called
10 Sylvain?

11 A Yes.

12 Q Did they do work for Kik in connection to
13 the -- with the Kin token offering?

14 A They did work -- well, I think we spoke
15 about it yesterday. They did a lot of the branding
16 work. And they came up with the name Kin. They
17 presented four different names and came up with the
18 name Kin. I'm not sure what else they were involved
19 in. Again, this is now getting into marketing, and
20 that was all handled out in New York.

21 Q That was exactly -- were you -- other than
22 the branding, were you involved with Sylvain's work on
23 other subjects?

24 A No.

25 Q All right. Do you know what -- do you know

Page 413

1 A Yes.

2 Q If you look in -- sorry. I can give you
3 the documents if you want them, if it would help. But
4 at about the same time, did Kik publish a frequently
5 asked questions document on its website?

6 A Likely on the community channel.

7 Q Okay. I'm sorry. What's a community
8 channel?

9 A It's where they would answer questions.
10 Like they build up with these -- with Kin, you have a
11 Kin community. That's how they talk about the product
12 and everything.

13 Q Let me just give you what's been marked as
14 Exhibit 7. Is that a -- do you recognize that
15 document?

16 A No, I don't recognize it.

17 Q Okay. There's another document called a
18 "Terms of Use Agreement." Do you remember that?

19 A No.

20 Q Okay. Do you think you ever saw a terms of
21 use agreement?

22 A I can't recall.

23 Q All right. So let me take you back to
24 Exhibit 93.

25 A Can I read this quickly?

Page 414

1 Q Yeah. Feel free.
 2 A Okay.
 3 Q So this is a press release that Kik
 4 released?
 5 A Yes.
 6 Q Okay. At this point, did -- sort of -- is
 7 this a description -- is this the time when this --
 8 around this October 29th, 2017 time, is that when Kik
 9 told people sort of how the token distribution event
 10 would work?
 11 A Sorry. Did you say October? August you
 12 mean?
 13 Q I'm sorry. August. Let me start over.
 14 A Yeah.
 15 Q Did Kik tell people using this press
 16 release around August 29, 2017, how the token
 17 distribution event would work?
 18 A I guess so. I don't know if there was
 19 other communication, but this is -- it says to learn
 20 more about it and register at -- for the TDE, please
 21 visit this site, right on the last line there.
 22 Q Yeah. Kin.kik.com site.
 23 A Yes.
 24 Q Sure. So did the -- did Kik tell people
 25 that the token distribution event would start on

Page 415

1 September 12th?
 2 A That's what it says in this press release.
 3 Q And was that true?
 4 A Yes. That was --
 5 Q That was the plan at the time?
 6 A Yes.
 7 Q And is that actually what happened?
 8 A I believe -- I can't -- I think it got
 9 delayed by a little bit, but not a lot. I don't --
 10 Q You don't know exactly what day it was?
 11 A No.
 12 Q Did Kik tell people they needed to register
 13 beforehand --
 14 A Yeah.
 15 Q -- if they wanted to buy tokens?
 16 A Yes.
 17 Q Okay. And did people need to register if
 18 they wanted to buy tokens?
 19 A Yes.
 20 Q And there's -- if you look down at the
 21 bottom of this press release, it says, "All who wanted
 22 to participate in the TDE must register by
 23 September 9th, 9:00 a.m. ET." Do you see that?
 24 A Yes.
 25 Q Was that true?

Page 416

1 A Yes.
 2 Q So people needed to register by that
 3 deadline if they wanted to buy in the TDE?
 4 A Yes.
 5 Q Okay. As part of the registration process,
 6 did people need to provide information to Kik to prove
 7 their identity?
 8 A Yes.
 9 Q Did they have to prove where they were
 10 located?
 11 A Yes.
 12 Q Their address?
 13 A Yes.
 14 Q Did Kik hire a company with experience in
 15 the business of client identification verification?
 16 A We didn't hire a company. That's where we
 17 hired the consultant.
 18 Q Consultant, who was the consultant?
 19 A Scott Benson.
 20 Q Okay. And why him?
 21 A He had AML experience. So this gets back
 22 to discussion we had yesterday about KYC. And we
 23 looked at it as a currency, and therefore we had to
 24 follow KYC rules and --
 25 Q Did Kik hire any outside contractors to

Page 417

1 help him actually do the work?
 2 A Yes.
 3 Q Who was that?
 4 A I can't remember the name of the company,
 5 but these were companies that -- as an example, the
 6 certain level of the people that were buying the
 7 tokens, they had to compare -- we had to compare their
 8 password to a selfie. And so there's technology
 9 that --
 10 Q Passport did you say?
 11 A Passport. Sorry. Yeah.
 12 Q Yeah.
 13 A And they would submit a copy of their
 14 passport, and then they would have to take a selfie.
 15 And then the computer would compare the two, right?
 16 And if they were okay, then they would -- it would go
 17 to process for validation.
 18 In a lot of cases, that computer program
 19 didn't work exactly well, so we had a lot of, like,
 20 rejections that we had to review manually. So
 21 everybody actually took part in some process of going
 22 through and doing that.
 23 Q The computer technology you're describing,
 24 that's not Kik's technology?
 25 A No.

Page 418

1 Q That was the contractor you hired?

2 A Exactly.

3 Q But then, actually, Kik employees had to go

4 look at some of them that were rejected to see --

5 A Yes.

6 Q -- do these match?

7 A Yes. Well, it wasn't -- what happens is

8 like there's a glare on the picture and you can't see.

9 And so computer will reject it, but you can take a look

10 and you can verify.

11 Q Did you do that yourself personally?

12 A I did it for one night, yes.

13 Q How many did you make?

14 A I don't know. Probably I did about, I

15 don't know, 50.

16 Q So between the gentleman that you hired and

17 the companies that you hired, do you think they did a

18 good job identifying -- verifying people's identity?

19 A Yes. This is the area I said that we were

20 one of the first in this area to do KYC. And so now

21 there are a lot of services that do this.

22 Q Exhibit -- can you look at Exhibit 93?

23 A Uh-huh.

24 Q Do you see that the end of the first

25 paragraph, it says -- sorry. Middle of the first

Page 419

1 paragraph says -- let me start over.

2 First paragraph says, "Kik Interactive, the

3 creator of the popular chat platform, Kik, today

4 announced Kin's upcoming token distribution event will

5 commence on Tuesday, September 12th." Do you see that?

6 A Yes.

7 Q "Kik also announced it has successfully

8 closed a presale round of \$50 million to select

9 accredited investors, including Blockchain Capital,

10 Pantera Capital, and Polychain Capital."

11 A Yes.

12 Q Okay. And then the last part says, "Kik

13 will look to raise a total of \$125 million through its

14 token sales." Do you see that?

15 A Yes.

16 Q So was that true at the time?

17 A That's what we were intending to raise in

18 cap out, was 125 million.

19 Q In the end, the company raised about 100?

20 A Yes.

21 Q And the 50 million from the presale was

22 part of the 125 intended and that 100 million

23 collected?

24 A Yes.

25 Q Again, we have talked a bunch about the

Page 420

1 KYC, and I'm trying to limit my questions. You said

2 people were required to provide a passport number?

3 A Yes. Passport picture.

4 Q Passport? Did Americans have to give a

5 passport?

6 A Yes.

7 Q And they had to give their address?

8 A Yes. And then we ran those people through

9 OFAC.

10 Q What's OFAC?

11 A Was it -- the Overseas Foreign Asset

12 Control something. Is that what it stands for? Is

13 that what it --

14 Q You're certainly in the ballpark.

15 A Okay.

16 Q It's a federal government thing that helps

17 with -- for people with -- the federal government has?

18 A Yeah. Potential terrorist or something.

19 So we had some people rejected. Some people got quite

20 upset because their name was similar to somebody else's

21 and they had those sort of histories.

22 Q Did Kik limit Kin token sales to people who

23 were in certain countries?

24 A Yes.

25 Q So Kik refused to sell to people if the KYC

Page 421

1 process identified them as living in a certain country?

2 A Yes.

3 Q What countries?

4 A China, Canada in the end. I think those

5 were the two main ones. And I think there was some

6 other countries, but I can't recall.

7 Q And if a person was a Canadian citizen,

8 could they buy if they lived somewhere other than

9 Canada?

10 A I think it was based on residency, but I

11 can't recall. I know we had one incident where -- with

12 the OSC where we had two people that bought and they

13 sort of lied, so we had to end up --

14 Q Oh, the Brazilians?

15 A Yes.

16 Q Okay. I think I've seen the e-mail.

17 A Yeah.

18 Q They were people who --

19 A I can't recall.

20 Q Originally, the KYC thought they lived in

21 Brazil, and it turned out they were in Canada?

22 A Exactly.

23 Q Okay.

24 A So we --

25 Q Other than that, are you aware of anybody

Page 422

1 else who -- where the data said one country, but it
2 turns out they lived in another country?

3 A I'm not aware of any.

4 Q Within the United States, did Kik limit Kin
5 token sales to people who live in certain states?

6 A Yes.

7 Q What states were -- some states were
8 excluded?

9 A I think New York was the only state that
10 was excluded, but -- I think that's the only one I can
11 recall.

12 Q And, again, the KYC process would have
13 identified what state the person lived in. Kik made
14 its decisions based on that information?

15 A Yes.

16 Q Do you think Kik's KYC process actually
17 sort of had an output of reliable information?

18 A I believe so, yes. I mean, it was a new
19 process for us. One of the reasons that I was quite
20 adamant of getting somebody of Eileen's stature in the
21 company is because she had a banking background and had
22 experience with a lot of those different elements of
23 improving KYC and what the regulations were and
24 processes.

25 Q Okay. And I don't want to ask about her

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1 legal advice to you. Other than giving legal advice,
2 did she have that role in helping create or vet this
3 KYC process?

4 A Not really, because she wasn't there at the
5 time when we started it.

6 Q Okay. And so if someone had said -- filled
7 in information that said they were in the U.S. for the
8 KYC process or Kik app but you didn't think they lived
9 in the U.S., did Kik sell to those people?

10 A I don't recall. I wasn't -- like in the
11 actual KYC process itself, I couldn't comment on that
12 level. But that was what technically should happen.

13 Q Did Kik sell tokens to people where it
14 wasn't sure where they lived?

15 A I don't believe so. I think they all had
16 to register.

17 Q So if Kik sold tokens to someone, Kik
18 thought it knew where they were living?

19 A Yes.

20 Q After people registered, did that include
21 providing sort of an special interest, what the person
22 might be interested in buying?

23 A Yes.

24 Q And what did Kik do with that information?

25 A We took all of the information on --

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1 actually, we took the number of registered users. And
2 then we took the -- well, it would have been
3 75 million, is what we were looking at. Then we
4 divided this to what the maximum was that somebody
5 could purchase at. And so in the first 24 hours,
6 that's as much as they could purchase, because we
7 wanted as broad distribution as possible. So there was
8 a cap level on that.

9 Q Before the actual sales started, did Kik
10 use the information about expressions of intent to
11 identify some people and reach out to them?

12 A No. I don't recall anyway.

13 Q Do you remember Tanner Philp reaching out
14 to people who expressed an interest in significant
15 amounts of Kin tokens?

16 A He might have. I don't recall.

17 Q I'm just going to give you what I'm going
18 to mark as Exhibit 185.

19 (SEC Exhibit No. 185 was marked for
20 identification.)

21 BY MR. MITCHELL:

22 Q What we have is a relatively long e-mail
23 chain. Let me draw your attention to -- let me give a
24 copy to your lawyers. And then I will -- I'm just
25 going to focus on a piece of it. It's a Bates number

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1 KIK_00025985 to 989. It's a bunch of pages long and
2 there's a bunch of e-mail being forwarded here.

3 A Should I read the whole thing or --

4 Q Well, you're welcome to read the whole
5 thing. I'm going to take you all the way to the back
6 end of it, to the page that ends in 988.

7 A Yes.

8 Q We're doing what a lawyer calls refreshing
9 your recollection, if it's possible.

10 A Okay.

11 Q Do you see there's an e-mail on
12 September 7th, 2017, from Tanner Philp?

13 A Yes.

14 Q And do you see that it says, "I e-mailed
15 all the participants that indicated \$1 million plus,
16 excluding China, and have been doing follow-up calls
17 with a bunch"?

18 A Uh-huh.

19 Q Does this refresh your recollection about
20 what Mr. Philp -- whether Mr. Philp reached out to
21 people?

22 A I guess so. I can't specifically recall
23 the e-mail.

24 Q Okay. I can show you 987. There's a
25 discussion of possible ways to cap.

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1 A Sorry. Can I read the whole e-mail? Just
 2 I don't want to get --
 3 Q You're welcome to. Let me just ask you a
 4 question not using the e-mail.
 5 A Okay.
 6 Q Because I'm not sure I have another. Do
 7 you know what the term "whale" means?
 8 A Whale is a large buyer.
 9 Q Okay. And so did you -- do you remember
 10 people reaching out to large potential buyers before
 11 the Kin token event?
 12 A For the presale, we did.
 13 Q Yeah. Leaving aside the presale. I mean,
 14 people who registered for the public sale, do you
 15 remember anyone from Kik reaching out to people who had
 16 expressed --
 17 A Tanner would have, I guess, based on this
 18 e-mail.
 19 Q Leaving aside the e-mail, do you have any
 20 other memory of that?
 21 A No.
 22 Q Okay. Let me just take that back. At some
 23 point, Kik filed a Form D with the SEC?
 24 A Okay.
 25 Q Do you remember? Okay. I'll give you

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1 what's marked as Exhibit 6. It's a Form D. It's
 2 KIK_000073 to 78. We've already -- dealing with the
 3 company, the company has already said this is a copy of
 4 the Form D that it filed.
 5 A Yeah.
 6 Q Did you sign it?
 7 A I'm not sure if I signed this or not.
 8 Q If you flip to the back page, there's an
 9 issuer name and a signature block and a --
 10 A Yeah. I guess I did sign it.
 11 Q Do you have any memory of this?
 12 A Not really, quite frankly. But I know that
 13 Nancy was fairly diligent on keeping things, so she
 14 would --
 15 MR. DE JARNETTE: Don't get into --
 16 THE WITNESS: Okay.
 17 BY MR. MITCHELL:
 18 Q Don't tell us about your conversations with
 19 her.
 20 A Okay. So, yes, I signed this, I guess. I
 21 don't see -- I don't know -- is the signature not on
 22 the document?
 23 Q This is the document.
 24 A Okay. This was signed through DocuSign?
 25 Is that how it -- okay.

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1 Q Literally, I don't know. I don't know the
 2 answer. I have a bias against some of the government's
 3 IT systems. It makes me think it's probably not
 4 something like DocuSign. But do you see on the back
 5 page where it says "signature," and then underneath it
 6 says "S/Peter Heinke"?
 7 A Yeah. That's what -- I don't know what
 8 that means. Does that mean I electronically signed it
 9 or --
 10 Q Do you remember -- let me just -- we're
 11 going to just ask you what you remember. Do you
 12 remember anybody -- sorry. I don't want to ask that
 13 that way.
 14 Leaving aside -- I don't want to hear any
 15 legal advice. Did you have a practical conversation
 16 with anyone at Cooley about that's, you know, the
 17 practical way that Kik would actually make a filing
 18 with the SEC?
 19 A I can't recall.
 20 Q Okay. There are boxes checked in here. Do
 21 you remember doing that, like did you do that?
 22 A I wouldn't have prepared the form, no.
 23 Q You didn't prepare it. Perfect.
 24 A No.
 25 Q Okay. Let me take that back. I'm going to

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1 give you Exhibit 133. It's a list. And I believe we
 2 discussed -- let me just make sure I know what we
 3 talked to counsel about.
 4 You see the dates on Exhibit 133?
 5 A Yes.
 6 Q Okay. Do you know whether -- do you
 7 know -- did Kik sell SAFTs on September 11th, 2017?
 8 A Looks that way according to this, yes.
 9 Q Do you have any memory of it separate from
 10 that?
 11 A Yeah, I have memory of it.
 12 Q You do?
 13 A Yes, of some of them.
 14 Q And that the -- that there were at least
 15 sales up to September 11th?
 16 A Yes.
 17 MR. DEJARNETTE: Do we have a Bates number
 18 for this document?
 19 MR. MURTHA: It's an Excel spreadsheet,
 20 probably in the metadata that we have.
 21 (Discussion off the record.)
 22 THE WITNESS: Mostly, these people are
 23 shareholders that look at September 11th.
 24 BY MR. MITCHELL:
 25 Q Okay. Yeah. I'll take that back. So let

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1 me ask, the Ontario Securities Commission --
 2 A Yes.
 3 Q -- did you have any interaction with the
 4 Ontario Securities Commission about the offer?
 5 A Yes.
 6 Q So I don't want you to talk to me about
 7 conversations you've had with your lawyers alone.
 8 A Got it.
 9 Q Okay. So don't tell me things that you
 10 learned from a lawyer. Separate from that, are you
 11 aware of any substantive differences between the
 12 Canadian and U.S. law about whether something --
 13 whether the Kin token is a security?
 14 A Substantive differences like actual --
 15 Q That Canada treats something differently
 16 than the U.S.
 17 A I'm not aware of -- when you say aware,
 18 biggest difference, we felt and we came out of -- we
 19 had a meeting with the OSC.
 20 Q Yes. And, again, I just want to make sure
 21 you're not telling me things that the lawyer said.
 22 A Yeah.
 23 Q So keep going.
 24 A No. So we had a meeting with the OSC. And
 25 we -- maybe I should take it back. We had -- we went

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1 in on our own volition to meet with the OSC. William
 2 Mougayar, who was one of the people that was our
 3 advisor, is also on the Kin Foundation. He said that
 4 he had heard the OSC, I would say, was questioning,
 5 like, what we were doing, because they were getting
 6 questions about our offering.
 7 And so he suggested that for the purposes
 8 of basically the industry, that it would be good for us
 9 to go in and speak to them about what we were doing and
 10 what we were going ahead with. And he said to help
 11 educate them to some extent about what we were doing.
 12 And he was very cautious that we would be -- like keep
 13 it very simple, because they have a limited
 14 understanding at this point in time as to what these
 15 cryptocurrencies are.
 16 So on that basis, we said, "Sure." And we
 17 set up a meeting with them. And someone said they were
 18 a little upset. And we said we don't understand why
 19 they were upset. And, again, it came down to the view
 20 whether this was a security or not. And we felt it
 21 wasn't. And so we went in there to have that
 22 discussion with them.
 23 Q Okay. And you personally went to that
 24 meeting?
 25 A Yes. There was myself, Ted Livingston,

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1 Tanner. I can't recall whether Eileen -- I think
 2 Eileen was on the call, or she might have been. Nancy
 3 Wojtas.
 4 Q She was on the phone or in person?
 5 A Nancy was on the phone. And I think the
 6 same with Eileen if she was on that one. And then Ross
 7 McKee.
 8 Q From Blakes?
 9 A From Blakes, yes.
 10 Q You're describing a meeting. Were there
 11 any other meetings or phone calls that you had with the
 12 OSC?
 13 A Not us directly. Only counsel did.
 14 Q Okay. So tell me about that meeting. What
 15 happened?
 16 A Meeting, we went through what we were
 17 doing, how we went about it. We explained to them that
 18 we had originally felt that we had to have an MSB,
 19 money services business, and that we filed for FinCEN,
 20 with respect to registration with FinCEN. And then we
 21 didn't go ahead with that part of it because, again,
 22 under advice of internal counsel and review, we didn't
 23 need to be in --
 24 MR. DEJARNETTE: Don't get into the
 25 substance.

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1 THE WITNESS: So then we didn't go -- we
 2 didn't go ahead with that. And then she asked us
 3 various questions about what we were doing and how the
 4 ecosystem worked and that sort of thing. And then --
 5 BY MR. MITCHELL:
 6 Q Who's the "she"?
 7 A This is Pat Chaukos who ran sort of -- it
 8 was sort of a group that looked at new FinCEN type
 9 related projects. And then there was one very
 10 perplexing comment from her. We said that we believed
 11 that we complied with -- we -- that we reviewed the
 12 Howey and that we were not a security under the Howey
 13 test. And her comment back to us was that was a very
 14 old framework and she didn't think it was applicable,
 15 which was a bit of a shock to us.
 16 And our lawyer stated, "Well, that's how we
 17 understand and we look at it." And that comment -- and
 18 she didn't make a comment in the meeting. She said,
 19 okay, basically these were their thoughts, but they
 20 would do further review and get back to us on it.
 21 Q Okay. In that meeting, did you feel like
 22 you had been able to give sort of a good description of
 23 what you were planning to do?
 24 A Yes.
 25 Q And so then, what happened after --

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1 anything else -- during that meeting, anything else --
2 did the OSC take any other positions that you remember?

3 A No. They said for us to take a look at a
4 case, and that the Quebec authorities had somebody
5 approach them about a token. And it was called Impact
6 or something like that. And we did a review of that.
7 It was totally different than what we were doing. And
8 our counsel --

9 MR. DEJARNETTE: Don't -- don't --

10 BY MR. MITCHELL:

11 Q Who did the review?

12 A Our counsel, they wrote to the --

13 MR. DEJARNETTE: Don't get into --

14 THE WITNESS: Okay.

15 BY MR. MITCHELL:

16 Q They wrote to the --

17 A Okay. Sorry.

18 Q So only tell me about what they said to the
19 OSC. The lawyers then sent -- your lawyers sent
20 something to the OSC about that case?

21 A Yes.

22 Q And what else happened after?

23 A So then through someone else, by the fellow
24 by the name of Paul Desmarais, one of the Desmarais,
25 who's a fairly large family in Toronto -- or in Canada.

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1 look at this income as income and will be taxed on it
2 within the year. And on the other hand, if people are
3 saying it's a security, how do we deal with that within
4 the two government regimes basically? And he said
5 that's a really interesting point.

6 He says, "I don't know how." And then he
7 said, "On what basis do you think it's income?" And I
8 said we had -- very early on in the process, we used
9 KPMG, who's our auditors. And we had discussed this at
10 quite length early on in the process on how this would
11 be treated for financial reporting purposes, and then
12 also subsequently for tax.

13 And I know KPMG had -- they said they had
14 up to eight people at their national office researching
15 it. I was very cautious about saying I don't want to
16 be paying for the eight people. So he said, "Well,
17 that is a very strong point." And he said, "Is there
18 anything you can share with me on that?" And I said,
19 "Yes, I can send you the KPMG document," which I did
20 send them. And then twice I followed up, and I didn't
21 hear anything back from them.

22 Q Did you hear again from Ontario Securities
23 Commission?

24 A Our counsel followed up with her. And I
25 think a couple of times --

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1 They run a corporation called Power Corp. And they
2 said I should talk to the Quebec Securities Commission.
3 So the way we're organizing -- I just learned all of
4 this -- is that there is all the individual provincial
5 securities, but then there is what they call the
6 Canadian Securities Association.

7 And every year, one of the securities
8 provincial group is sort of running that sort of
9 organization. So Quebec was running it that year. And
10 we talked to the fellow by the name of Gils, I think
11 he's one of the senior people at the Quebec, and one of
12 their regulators. I can't remember her name. It was a
13 female. And we went through and described our project
14 and discussed what we were doing. He pointed us to
15 that case. I'm not sure if we had reviewed that case
16 at that point in time.

17 Q What case?

18 A The case that they -- the token that they
19 had --

20 Q The one you mentioned before, the Impact,
21 or something like that?

22 A Exactly. Yeah. And then in the course of
23 the discussion, I said for me, I find it really
24 challenging as a CFO. Because on one hand, you have a
25 government organization. Revenue Canada will take a

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1 MR. DEJARNETTE: I'm going to caution you.

2 THE WITNESS: Yeah.

3 MR. DEJARNETTE: If you learned anything
4 about that from counsel, be cautious that it's
5 attorney/client privileged.

6 MR. MURTHA: Did you take any notes during
7 the meeting with the OSC?

8 THE WITNESS: I don't think I took any
9 notes. I'll have to go back and take a look.

10 MR. MURTHA: Did anyone on your team take
11 any notes?

12 THE WITNESS: Nancy, quite likely, probably
13 took notes, and Scott. I know our counsel, Blakes, was
14 taking notes.

15 MR. MURTHA: Anyone else?

16 THE WITNESS: Not that I can recall. I
17 don't think Ted was writing anything down.

18 MR. MURTHA: Where would you keep notes if
19 you had taken them during the meeting?

20 THE WITNESS: In my notebook. But I --
21 quite frankly, I don't think I took any notes.
22 Normally, when counsel was present, I didn't -- I'm not
23 a good note taker, so --

24 MR. MURTHA: What did counsel say to the
25 OSC during the meeting?

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1 THE WITNESS: That's what I had said
2 earlier, that how we -- how we went about with using --
3 you know, actually, I think Nancy was actually telling
4 them about the fact that we registered at MSB. We
5 registered with FinCEN and we looked at this as a
6 currency. And then the discussion of how we came up
7 and Scott -- I keep on saying Scott. I think there's a
8 new Scott. Ross went through the Howey test, and
9 that's when she made her comment.

10 BY MR. MITCHELL:

11 Q Okay. Ross McKee?

12 A Yes.

13 Q And the "she" there is the woman from --

14 A Pat Chaukos.

15 Q Pat Chaukos. Okay.

16 A And she had two other people there, but
17 they didn't say anything.

18 Q At some point after that meeting, did the
19 OSC staff tell Kik that its position was that the token
20 distribution was an offer of securities?

21 A No. They said they were still reviewing
22 it. We went back to them twice. So can I just -- I'm
23 not sure. This is where it gets in the fuzzy line
24 about what was -- how the process went from there.

25 Q Oh, because the OSC is talking to a lawyer

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1 upon that was they had not taken a position there. Any
2 other understanding that he had about the
3 communications with the Ontario Securities Commission
4 were based upon discussions with counsel, other than
5 him seeing certain correspondence that were sent to the
6 Ontario Securities Commission. But you can ask him
7 whatever question you want with that in mind.

8 MR. MITCHELL: But if I ask him questions
9 about things other than documents, I'll be in an area
10 that you would instruct him not to answer?

11 MR. CADIGAN: Right. After the initial
12 meeting.

13 BY MR. MITCHELL:

14 Q Let me give you a document.

15 (SEC Exhibit No. 186 was marked for
16 identification.)

17 BY MR. MITCHELL:

18 Q This will make it cleaner. This is
19 Exhibit 186. And that is, on its face, a November 2nd,
20 2017, letter from the Blakes law firm, with the Bates
21 stamp SEC-OSC-E-000005 to 29.

22 A Uh-huh.

23 Q Have you ever seen this letter before?

24 A Yes.

25 Q Is this a letter that Ross McKee sent to

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1 who's talking to you?

2 A Exactly. So OSC talks to the lawyer, and
3 the lawyer writes us a letter. So --

4 MR. DEJARNETTE: What was the question
5 again?

6 MR. MITCHELL: What did the OSC say.

7 MR. DEJARNETTE: During the meeting or
8 after?

9 MR. MITCHELL: Oh, after the meeting.

10 THE WITNESS: After the meeting?

11 MR. MITCHELL: After the meeting.

12 MR. DEJARNETTE: Let's go off the record.

13 THE VIDEOGRAPHER: Going off the record.

14 The time is now 2:40 p.m.

15 (A brief recess was taken.)

16 THE VIDEOGRAPHER: Back on the record. The
17 time is 2:51 p.m.

18 BY MR. MITCHELL:

19 Q Did you have any conversations with the
20 staff on the break?

21 A No.

22 Q Okay.

23 MR. CADIGAN: So just for clarification.
24 So Mr. Heinke was at the meeting with the Ontario
25 Securities Commission. And his understanding based

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1 the OSC on behalf of Kik?

2 A Yes.

3 Q Using this, I'm going to take you down one,
4 two, three, four, five paragraphs -- sorry. Well, this
5 discusses a meeting on October 14th. Do you see that?
6 Sorry. Third paragraph, it says there's a meeting on
7 October -- let me start over.

8 A Okay.

9 Q Do you see the third paragraph?

10 A Yes.

11 Q It says, "The meeting on October" --
12 "August 14th was in fact inconclusive." Do you see
13 that?

14 A Yes.

15 Q Did that -- did you attend the meeting on
16 or about August 14th?

17 A Yes.

18 Q All right. And then it just --
19 there's a -- the next paragraph says, "There was an
20 exchange of e-mails between myself and Ms. Chaukos on
21 August 22nd," and it goes on from there.

22 A Yes.

23 Q Do you see that?

24 A Yes.

25 Q Have you seen those e-mails?

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1 A I don't recall -- I don't know. I can't
 2 recall seeing those e-mails.
 3 Q And the next paragraph says, "In fact, the
 4 first time that the OSC staff definitively communicated
 5 a position that the ITD constituted an offer of
 6 securities was in the telephone call to me from
 7 Ms. Chaukos on September 5th shortly before the
 8 scheduled launch date."
 9 A Yes.
 10 Q Do you see where I read that?
 11 A Yes.
 12 Q What is ITD?
 13 A It says at the top. I don't know why --
 14 Q Okay.
 15 A Yeah. Public sale of Kin ITD. I don't
 16 know why he's using those -- that acronym.
 17 Q The acronym he's using there is for the
 18 token event that we've been calling the token
 19 distribution event?
 20 A Yes.
 21 Q That's the sale of token to the public?
 22 A Yeah.
 23 Q Is what he wrote there in that sentence in
 24 fact -- it goes on. Is that true?
 25 A Yes. Well, that's -- that again gets back

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1 to September 5th. So that's the only basis I have and
 2 that's privileged conversation.
 3 Q I see what you're saying.
 4 A You see what I'm saying? You're asking me
 5 whether this call in September 5th is --
 6 Q Right. Do you have any reason to think --
 7 well, before September 5th, 2000 -- sorry. By
 8 September 5th, 2017, were you aware that the OSC staff
 9 had communicated a position that the sale of token to
 10 the public constituted an offering of securities?
 11 A Prior to September 5th?
 12 Q No. On or about September 5th. Did you
 13 become aware of that then?
 14 A Like this is -- this really is a fuzzy area
 15 here.
 16 Q To answer my question, you would be
 17 repeating things that a lawyer said to you?
 18 A Yes.
 19 Q Okay. Well, that is what Mr. McKee said
 20 here; is that right?
 21 A Yes.
 22 Q Within a few days of September 5th, did Kik
 23 make a decision about selling Kin tokens to people in
 24 Canada?
 25 A Yes.

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1 Q What?
 2 A We decided not to proceed with a sale in
 3 Canada.
 4 Q Why?
 5 A Because we weren't -- we were concerned
 6 that they didn't have a basis upon how they were going
 7 to framework, how they were going to review whether
 8 these were securities or not. Because we had no -- as
 9 per the meeting on August 14th, the meeting as it says
 10 was inconclusive. And we still didn't have any sort
 11 of -- the framework we were using, which was Howey, and
 12 we believed we were not a security based on Howey, they
 13 weren't -- they didn't confirm to us that they were
 14 going to use that test.
 15 Q Okay. I don't want you to tell me what the
 16 information was. By that point, had you had
 17 conversations with your attorneys about conversations
 18 they had after the meeting with the OSC? Let me say
 19 that again a different way. At the time they were
 20 talking about -- don't tell me what your attorney said.
 21 But had you -- were you aware in this time around,
 22 whenever you're making this decision, that your lawyers
 23 had had conversations with the OSC after the meeting
 24 that you attended?
 25 A Yes.

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1 Q And did your lawyers' conversations with
 2 the OSC play a part in whatever analysis you were doing
 3 about whether to sell to Canadians?
 4 MR. DEJARNETTE: You can answer the
 5 question to the extent you don't get into the substance
 6 of any communications with counsel.
 7 THE WITNESS: Okay. So ask the question.
 8 MR. MITCHELL: Can you read it back? I'm
 9 not sure I --
 10 (Record read.)
 11 THE WITNESS: Yes.
 12 BY MR. MITCHELL:
 13 Q And you see Mr. McKee's letter says that
 14 Ms. Chaukos told him on September 5th that the OSC
 15 staff had a position that selling tokens to the public
 16 constituted an offering of securities. Do you see
 17 that?
 18 A Yes.
 19 Q Okay. Don't tell me your basis, but do you
 20 have any reason to think that Mr. McKee is wrong about
 21 that?
 22 A No.
 23 Q Okay. And so at some point, Kik decided to
 24 not sell to people in Canada?
 25 A Yes.

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1 Q Okay. And you told me earlier that part of
2 your reasoning was what you heard in the August
3 meeting?
4 A Yes.
5 Q Okay. But some of your reasoning was
6 something else, that you can't discuss with me because
7 it was privileged conversations?
8 A Yes.
9 Q Well, did you -- did Kik tell the public
10 about that policy, about the no selling to Canadians?
11 A Yes, I believe we did.
12 Q Okay. Did they do it in a medium post by
13 Mr. Livingston?
14 A Yes.
15 Q Let me just give you Exhibit 187 and ask if
16 this is the Medium post.
17 (SEC Exhibit No. 187 was marked for
18 identification.)
19 THE WITNESS: Do you want this back?
20 BY MR. MITCHELL:
21 Q Yeah. I'll take that back. Thank you.
22 Is Exhibit 187 the Medium post where Kik
23 announced that it wouldn't sell to Canadians?
24 A Yes.
25 Q And Kik had the ability -- the technical

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1 ability at that point to exclude people from one
2 country?
3 A Yes, because we KYC'ed everybody.
4 Q But even as of September 7th, you could
5 still make decisions?
6 A Yes.
7 Q Okay. Did Kik analyze the Kin token --
8 whether offering Kin tokens -- let me start over.
9 Did Kik analyze the Kin tokens and the
10 legality of its sales under the laws of any countries
11 other than the U.S. and Canada?
12 A I think we -- I can't really recall. I
13 believe we did some work in England and other work in
14 Japan, and that was about it. And then China, as you
15 know, they banned ICOs, so we decided not to in that
16 country.
17 Q So in the UK first, did you hire attorneys
18 to look at UK laws?
19 A Our counsel spoke to attorneys. And those
20 countries --
21 MR. DEJARNETTE: Don't get into any
22 substance.
23 THE WITNESS: That's all. Yeah.
24 BY MR. MITCHELL:
25 Q And other than the UK and Japan, did Kik

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1 analyze the Kin tokens -- the laws of any other
2 countries?
3 A I don't believe so.
4 Q Did Kik do anything to keep people who
5 bought Kin tokens in the public sale from selling those
6 tokens to people in Canada?
7 A I don't think we could do anything, but I
8 can't recall. I think there was something -- I think
9 Ross actually looked at something on that basis.
10 MR. DEJARNETTE: Don't get into any
11 conversations with Ross.
12 THE WITNESS: Okay.
13 BY MR. MITCHELL:
14 Q When people bought Kin tokens in the token
15 distribution event, was there any limit on who they
16 could sell it to afterwards?
17 A Not that I believe.
18 Q Okay. So then at some point in September,
19 the -- I'm sorry. Exhibit 93 sort of described that
20 there would be a process for registering, and then the
21 sale would start to happen.
22 A Yes.
23 Q So did the sale start on September 12th?
24 A I can't recall if it was September 12th or
25 if it was later, but I -- I don't know. I can't

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1 recall.
2 Q Okay. I'm going to give you one copy of 94
3 and put it in the middle in case your attorney wants
4 it. Is that a September 12th press release?
5 A Yes.
6 Q Does this refresh your -- feel free.
7 Here's more copies.
8 Does that --
9 A Yes.
10 Q -- refresh your recollection? Did the sale
11 start on September 12th?
12 A That's right.
13 Q And do you see the second paragraph says,
14 "TDE participants will have 24 hours, starting on
15 September 12th, 9:00 a.m. ET, to participate up to
16 US\$4,393"?
17 A Yes.
18 Q Was that true?
19 A Yes.
20 Q For the first 24 hours, people could put
21 out that amount and everyone got a chance to buy
22 tokens?
23 A Yes. Yes.
24 Q And then after -- I think we discussed this
25 earlier. After that first 24 hours, there were

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1 other -- there were either one or more rounds after
 2 that where people could put in more money and buy more
 3 tokens if they wanted?
 4 A Yes. Yes.
 5 Q And when people sent -- and by doing this,
 6 it has the number in dollars, but people actually sent
 7 Ether to Kik?
 8 A Yes.
 9 Q And when they sent the Ether to Kik, were
 10 they committing to buy the Kin?
 11 A Yes.
 12 Q Did anyone back out? Did anyone ever --
 13 did they send their Ether and then say, "Hey, forget
 14 it. I don't want this," and sort of canceled the deal?
 15 A Not that I recall.
 16 Q Did the sale end on September 26th?
 17 A Yes. I believe so, yes.
 18 Q Okay. And did Kik raise about \$50 million?
 19 A Yes.
 20 Q In Ether?
 21 A Yes.
 22 Q So let me just give you the September 26th
 23 press release, which is marked 95. Is Exhibit 95 a --
 24 sorry. Let me take you back just in case I didn't ask.
 25 Is Exhibit 94 a press release that Kik published?

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1 A Yes.
 2 Q Okay. Is 95 a press release that Kik
 3 published?
 4 A Yes.
 5 Q And on the dates that are on them, as far
 6 as you know?
 7 A Yes, as far as I know.
 8 Q Okay. So let me take you to 95.
 9 A Yes.
 10 Q The text at the beginning says, "Kik
 11 Interactive, the creator of the popular chat platform,
 12 Kik, has announced the Kin's token distribution event
 13 (TDE) has successfully ended raising nearly
 14 US\$100 million." Do you see where I read that?
 15 A Yes. Yes.
 16 Q Okay. Was that true?
 17 A Yes.
 18 Q And the hundred million dollars, that was
 19 \$50 million of Ether that Kik raised in the sale to the
 20 public and about \$50 million in US dollars that it
 21 raised in the SAFT sales?
 22 A Correct.
 23 Q All right. Then it says, "More than 10,000
 24 people from 117 countries participated in the token
 25 sale, immediately making Kin one of the most widely

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1 held cryptocurrencies in the world."
 2 A Yes.
 3 Q Do you see where I read that?
 4 A Yes.
 5 Q And was that true?
 6 A Yes.
 7 Q And how did Kik know how many people
 8 participated?
 9 A How does it know how many people
 10 participated?
 11 Q Participated, yes.
 12 A Because they were all KYC'd when they came
 13 in.
 14 Q Okay. Is that also how Kik knew how many
 15 countries were involved?
 16 A Yes, because we took passport information
 17 and other information from each of the individuals.
 18 Q And therefore knew what country they were
 19 from?
 20 A Yeah. Exactly. A lot of countries which I
 21 had never heard of.
 22 Q Let me have those back. At some point --
 23 so in our dealings with the company, we agreed that the
 24 Kin ecosystem was founded on September 12th, 2017?
 25 A Yes.

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1 Q Did you have a role in that creation?
 2 A Of the ecosystem?
 3 Q Of the Kin ecosystem foundation.
 4 A Oh, the foundation. Yes.
 5 Q What was your role?
 6 A I was initially an organizing director and
 7 basically instructed counsel initially to set up the
 8 corporation.
 9 MR. DEJARNETTE: Don't go into your
 10 instructions to counsel or your conversations with
 11 counsel.
 12 THE WITNESS: Okay. Okay.
 13 BY MR. MITCHELL:
 14 Q It's an instruction to someone to create a
 15 corporation?
 16 MR. DEJARNETTE: To the extent you're
 17 seeking legal advice or any conversation with
 18 counsel --
 19 THE WITNESS: Yeah.
 20 MR. DEJARNETTE: -- seeking legal advice --
 21 THE WITNESS: Okay.
 22 MR. DEJARNETTE: And if they don't, then
 23 you can go ahead and answer the question.
 24 THE WITNESS: No. There was legal advice
 25 sought.

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1 BY MR. MITCHELL:
2 Q Okay. So I'm not asking about the legal
3 advice. I'm asking you: Did somebody set up a
4 company, a Canadian corporation?
5 A Yes.
6 Q And did that person do it because you asked
7 them to do it?
8 A Yes.
9 Q And was that person a lawyer?
10 A Yes.
11 Q Okay. So can you tell me -- tell me about
12 that. Tell me what you -- don't give me any legal
13 advice they gave you, but tell me what your
14 instructions were.
15 A To incorporate a company.
16 Q Okay. And the person's name is Virginia --
17 I'm going to mispronounce her last name. Virginia
18 Ether?
19 A I don't know. Is she from LaBarge?
20 Q LaBarge is a law firm?
21 A Yes.
22 Q I'll just give it to you. It doesn't say.
23 Exhibit 188 is a certificate of incorporation that I
24 think Kik gave us.
25 (SEC Exhibit No. 188 was marked for

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1 identification.)
2 BY MR. MITCHELL:
3 Q KIK_001071 to 1076. Do you recognize this?
4 A Yes. I don't know. Virginia Ethier must
5 be from LaBarge, but I don't know who she was.
6 Q Who's the lawyer you were thinking of?
7 A The lawyer we used at LaBarge was James
8 Smith.
9 Q That's the person you gave the instruction
10 to?
11 A Yes.
12 Q Okay. And if you look on the second page,
13 did you sign this articles of incorporation?
14 A Yes.
15 Q And tell me, what -- so the 12 -- this is
16 formed on the 12th. Did the corporation -- did the --
17 yeah. Did this corporation have any operations between
18 then and the token distribution event, the end of
19 the -- through the token distribution event?
20 A No.
21 Q Okay. So at the time of the token
22 distribution event, had people decided -- well, let
23 me -- sorry. When it was formed, who were the
24 directors?
25 A Directors at that time would have been Ted

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1 Livingston and myself.
2 Q So at the time it was formed, was this
3 entity independent of Kik?
4 A No.
5 Q At the time of the public sale, had people
6 decided what operations would be put inside the Kik
7 company versus what we put inside the foundation?
8 A Not specifically. But in general, we knew
9 that the Kik foundation would be responsible for
10 running the rewards engine for driving further research
11 for building the community effectively.
12 Q That was the plan?
13 A Yes.
14 Q Okay. And in terms of how was the -- at
15 the time of the token distribution event, had you
16 decided how they'd do that, what their rights would be,
17 and what they can control?
18 A Not in detail. There was nothing really
19 done with the foundation, other than the fact that we
20 had spoken to William Mougayar and Bill Raduchel to be
21 directors on the Kik Foundation. That happened prior
22 to September 12th.
23 Q And did they -- were they named -- sorry.
24 Let me start with Mr. --
25 A Mougayar.

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1 Q Mougayar. You had talked to him -- had you
2 talked to him about the foundation before the 12th?
3 A Yes.
4 Q All right. And he had said he was
5 interested in being on the board?
6 A Yes.
7 Q But he wasn't actually made a board member?
8 A No.
9 Q Why not?
10 A He would have been -- I mean, part of it
11 was just organization level with everything going on.
12 He was -- both of them were going to join right away.
13 And then I believe it was at that time that we received
14 notification from the SEC, and everybody sort of held
15 back at that point.
16 Q And then in terms of -- do you know who
17 made the -- who had sort of the first discussion about
18 the foundation with Mr. --
19 A Raduchel.
20 Q -- Raduchel?
21 A I think -- if I recall correctly, it was
22 counsel.
23 Q Okay. Do you know whether that happened
24 before or after the token distribution event?
25 A That happened before.

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1 Q Okay. How do you know that?

2 A Because we had discussed approaching him
3 before.

4 Q Okay. What did -- so as of the time the
5 token distribution event, had the foundation done
6 anything?

7 A No.

8 Q At what point did the foundation start to
9 do things?

10 A Well, over the course of the fall, we had a
11 couple of meetings with Bill and William. I think
12 there were two meetings in particular. The objective
13 of the one was to discuss what the vision would be of
14 the foundation and how it would proceed and what was --
15 what were its goals. There was also a discussion about
16 Mackenzie and incorporating Mackenzie to look at how
17 the ecosystem would work, what the various factors
18 would be.

19 And so the foundation needed to approve
20 that. And as I said yesterday, Bill was for it.
21 William was against it. We had the discussion. And
22 what I had based on -- well, William understood in the
23 end, so they all agreed. The second discussion was
24 there was a point in time that Fred had proposed and
25 discussed with Ted about moving Kin operations

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1 a profit element to Kin that he thinks would be --
2 whereas Kin Foundation would be a nonprofit
3 organization.

4 And he said for things like where Kin has
5 the ability to issue options in Kik, you couldn't do
6 that in a foundation. So there's all sorts of tax
7 implications for any employees that would work under.
8 So based on that discussion and at that time.

9 And then we also had a review done from a
10 tax standpoint as to what would be involved in that.
11 And so the decision was made based on those discussions
12 not to proceed with that reorganization.

13 Q And the board of directors at the
14 foundation made that decision?

15 A The board of the directors of the
16 foundation, we didn't -- as I said, they weren't --
17 even though they weren't on the board, we -- they were
18 designee board members, so we based it upon their
19 advice.

20 Q All right. Who made the decision?

21 A We had to make the decision as board
22 members.

23 Q You and Mr. Livingston?

24 A Yes.

25 Q Okay. And that was in December of 2017?

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1 underneath Kik -- underneath the foundation and run it
2 totally separately.

3 And that was also discussed at the board
4 level. And the recommendation at that time was not to
5 proceed with that.

6 Q But there was a discussion about sort of
7 even the whole Kin operation shouldn't be owned by Kik
8 Interactive, it should be owned by the foundation?

9 A Yes.

10 Q That was still up in the air?

11 A No. It was decided at that meeting, Bill
12 Raduchel said he didn't think that was a good idea. As
13 I spoke yesterday, we hired Bill because he was -- for
14 two reasons. One was his economics background, which
15 is a big element of the whole Kin ecosystem. And the
16 second reason was he was one of the first people that
17 was a driver of open source software and he gave us
18 guidance on how that ran.

19 So he said that I -- you know, in the
20 organization, when they ran like -- I forget what the
21 name of the company was. But he said all services were
22 contracted outside. And there was nobody that was
23 actually in from an operating standpoint in the
24 foundation. And then the other reason he gave that we
25 shouldn't do that, he said that there is a -- there is

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1 A December or January. I can't really recall
2 the exact date. There would have been some
3 correspondence on it.

4 Q See if this refreshes your recollection.
5 It's -- Exhibit 189 is WR-KIK-00000282.

6 A Yeah. So December.

7 (SEC Exhibit No. 189 was marked for
8 identification.)

9 BY MR. MITCHELL:

10 Q Through 287.

11 A Yes.

12 Q Looking at Exhibit 189 refreshes your
13 recollection that that decision was made in December?

14 A Yes.

15 Q Is this an e-mail that you sent to
16 Mr. Raduchel?

17 A Yes.

18 Q And it has an attachment of some
19 alternative ways to organize the business?

20 A Yes.

21 Q I'm sorry. In your -- sorry. The e-mail
22 from Mr. McDonald to you and Mr. Livingston is
23 December. But the e-mail from you to Mr. Raduchel is
24 in January 2018, right?

25 A That's why. Exactly. That's why I was

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1 saying I wasn't sure if it was December or January.
 2 Q Now, do you think it was in January 2018?
 3 A Yeah, the meeting was.
 4 Q In January 2018, you and Mr. Livingston
 5 were still trying to decide the structure of the Kin
 6 business?
 7 A Yes. This came out of discussions Ted had
 8 with Fred Wilson. So I was not involved in the initial
 9 discussion of this. I was approached by Ted that Fred
 10 and him had had this discussion.
 11 Q Okay. So did you serve -- you served on
 12 the Kin board until May of 2018?
 13 A Yes.
 14 Q And then you left when Mr. --
 15 A Mougayar.
 16 Q -- Mougayar joined?
 17 A Yes.
 18 Q Okay. So during the time that you ran it,
 19 did the foundation have any employees or people other
 20 than you and Mr. Livingston?
 21 A No.
 22 Q Okay. So did the foundation have
 23 operations?
 24 A No.
 25 Q I'm sorry?

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1 A No. It held the Kin that was allocated to
 2 do it, but it didn't have any operations at that point.
 3 Q So other than, you know, having custody of
 4 six trillion Kin --
 5 A Yes.
 6 Q -- did the foundation do anything else?
 7 A No.
 8 Q Okay. Did the foundation enter into --
 9 A Sorry. One thing we did do is that the
 10 foundation had separate D and O insurance. So there
 11 was -- we did get separate D and O insurance for the
 12 Kin Foundation.
 13 Q So other than the D and O insurance and the
 14 custody of the Kin, did the foundation --
 15 A And the Mackenzie discussion. That was it.
 16 Q Okay. So did -- while you were at the
 17 foundation, did the foundation act through anyone other
 18 than you and Mr. Livingston and Mr. Mougayar and
 19 Mr. Raduchel?
 20 A No.
 21 Q Did -- while you were at the foundation --
 22 well, let me start. When you were at the foundation,
 23 did the foundation enter into any agreements with Kik?
 24 A No. There was discussions of getting a
 25 service agreement, but we had never entered in, from

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1 what I recall, a service agreement.
 2 Q All right. And let me take you to the end
 3 of the time while you were at Kik. I know you left Kin
 4 in May --
 5 A Yes.
 6 Q -- and Kik a month later. During the time
 7 you worked at Kik, did Kik and the foundation enter
 8 into any kind of contracts?
 9 A I don't believe so.
 10 Q Okay. So we have seen copies of a services
 11 agreement and the agency agreement. Do those ring a
 12 bell?
 13 A I don't recall them. But --
 14 Q Okay.
 15 A Is there an actual agreement?
 16 Q I guess let me just ask you that.
 17 (SEC Exhibit No. 190 was marked for
 18 identification.)
 19 BY MR. MITCHELL:
 20 Q I'm going to give you two Exhibits. One is
 21 190, which says "Services Agreement" on the top.
 22 (SEC Exhibit No. 191 was marked for
 23 identification.)
 24 BY MR. MITCHELL:
 25 Q And I'll give you 191, which says "Agency

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1 Agreement" on the top.
 2 A Okay.
 3 Q Let me just start you off with the
 4 question -- I'm sorry. Let me just start you off with
 5 the question of: Do you recognize any of these?
 6 A No, I totally forgot these.
 7 Q I'm sorry. But now, looking at them, do
 8 you recognize Exhibits 190 and 191?
 9 A You know, I honestly can't recall.
 10 Q Let me take Exhibit 190 first. Did Kik and
 11 the foundation enter into a services agreement while
 12 you were there?
 13 A No.
 14 Q And if you flip to the --
 15 A Is there an executed copy of this?
 16 Q That was going to be my next question. If
 17 you turn to the page that ends in 208, there's a
 18 signature page, but it doesn't have signatures. Have
 19 you ever seen an executed copy?
 20 A No, I don't recall. There could be, but I
 21 don't recall. I honestly don't recall.
 22 Q So let me move you to Exhibit 191 with the
 23 same question.
 24 A Yes.
 25 Q Did Kik and the foundation enter into an

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1 agency agreement while you were with them?
 2 A Not that I recall.
 3 Q And then, if you flip through, you'll find
 4 a signature page for this document, which is blank. Is
 5 there -- have you ever seen an executed copy?
 6 A No, not that I recall.
 7 Q While you were at Kik, did it ever invoice
 8 the foundation?
 9 A Yeah. We had to do -- I'm not sure how the
 10 actual transaction worked, but we had paid for some
 11 expenses on behalf of the foundation or we had loaned
 12 over some money, like there were discussions about how
 13 the foundation should be financed. And that was again
 14 discussions that we held with Bill Raduchel. So he
 15 described to us typically how the foundation he was
 16 involved with before operated.
 17 And one of the things he said is that
 18 people that were in the community or large consortium
 19 members would give money to the foundation. The
 20 foundation would generally operate on that basis. I
 21 had asked him if he had a little bit more insight on
 22 how the actual structures work. He was going to put me
 23 in touch with somebody. But I don't recall ever
 24 getting the name and having that discussion at the
 25 time.

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1 Q Did Kik gift money to the foundation?
 2 A No. It was never formally gifted. There
 3 was money -- we set up a bank account on behalf of the
 4 foundation. It had a separate bank account. And
 5 that's where we put that money in.
 6 Q How much money?
 7 A I think it was around 100,000.
 8 Q Did the foundation spend the money?
 9 A Yeah. The only thing I recall it spending
 10 on was the insurance.
 11 Q The D and O insurance?
 12 A The D and O insurance.
 13 Q Anything else?
 14 A Not that I recall offhand.
 15 Q Did the foundation ever give any consent to
 16 Kik to -- sorry. Did Kik ever work as an agent for the
 17 foundation?
 18 A Not sure what is implied under the word
 19 "agent."
 20 Q It's a broad term. It is a broad term that
 21 means -- "agent" used to mean, you know, where Kik
 22 acted on the foundation's behalf.
 23 A I don't think we ever -- I mean, outside of
 24 this agreement you showed me here, this agency
 25 agreement, I don't recall that there was anything

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1 formally awarded in terms of an agency agreement.
 2 Q We talked about there's an agreement. Did
 3 Kik ever act as foundation's agent, leaving aside
 4 whether there's an agreement?
 5 A I'm not sure what you mean by "act." Like
 6 in a formal sense that there was -- or that we did
 7 things on behalf of the foundation?
 8 Q Did things.
 9 A We did things on behalf of the foundation.
 10 Q What?
 11 A Well, we had a website set up for it, and
 12 we ran some community channels and that sort of thing
 13 for them.
 14 Q Anything else?
 15 A That's all I can recall offhand.
 16 Q And when you say you ran -- Kik ran
 17 community channels for them --
 18 A Yes.
 19 Q -- you mean for the foundation?
 20 A Yes.
 21 Q Which was you and Mr. Livingston?
 22 A We didn't run the community channels, but
 23 people like Kik.
 24 Q Right. Kik ran the community channels for
 25 the foundation?

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1 A Yes.
 2 Q And the foundation was you and
 3 Mr. Livingston?
 4 A Yes.
 5 Q These are some very basic questions, so
 6 I'll -- Kik, so we talked to Kik, and we've agreed that
 7 the Kin tokens that were distributed are tangible. But
 8 I had some technical questions to make sure we
 9 understand sort of how they work. Of the ten trillion
 10 Kin tokens that were created, did any of the tokens
 11 have superior rights over others?
 12 A No. There was something about -- I didn't
 13 understand the technology. Something about issuing
 14 colored tokens. But I can't really recall what that
 15 meant.
 16 Q Did -- were some of the Kin tokens colored?
 17 A Yes.
 18 Q What does that mean?
 19 A That's what I -- again, I don't recall
 20 what -- there was something -- I don't even know if
 21 they were instituted or not, but there was a discussion
 22 about colored tokens. So --
 23 Q Okay.
 24 A I'm not sure. There was some program they
 25 did with power users, if I recall, but I can't --

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1 exactly what that program was, it was --
 2 Q Let me come back to the power users just
 3 for a second. Did Kik give Kin tokens to power users
 4 at some point?
 5 A Yes, I believe we did.
 6 Q While you worked there?
 7 A Yes.
 8 Q How many?
 9 A I can't recall.
 10 Q So let me come back to these questions.
 11 Do you own some Kin tokens?
 12 A Yes.
 13 Q Are Kin tokens -- is each Kin token worth
 14 the same amount as any other Kin token?
 15 A Yes.
 16 Q And is there any way in which the value of
 17 one Kin token is greater or less than the other Kin
 18 token?
 19 A No. Other than -- I'm not sure how those
 20 Kin tokens were -- were issued to the power users.
 21 Whether they had the same rights as other tokens, I
 22 can't -- that's the one thing I can't recall.
 23 Q Were the tokens issued to the power users
 24 actual tokens on the Ethereum blockchain?
 25 A That's what I can't recall.

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1 Q Okay. So do you know whether Kik actually
 2 gave people Kin tokens or whether Kik just sort of told
 3 people you have the value of a Kin token, you can use
 4 it inside our app?
 5 A That's what I recall more, something along
 6 those lines.
 7 Q On the second line?
 8 A Yes.
 9 Q So that's not actually giving them Kin
 10 tokens the way that Kik gave Kin tokens to people who
 11 bought in the public sale --
 12 A Exactly.
 13 Q That's not the same?
 14 A Yes, yes.
 15 Q Do any Kin holders have more rights than
 16 other Kin holders because like -- you know, if they --
 17 if you hold a lot of Kin tokens, does that give you
 18 more rights than people who hold less than you?
 19 A The only differentiation are those that
 20 bought in the presale that had vested tokens.
 21 Q So some people can't -- they -- the tokens
 22 that were vested they have to hold for a while?
 23 A Yes, a year.
 24 Q Other than that, the rights are the same?
 25 A Not that I recall.

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1 Q And some of the Kin token that was created
 2 in 2017 was given to the Kin ecosystem foundation?
 3 A Yes.
 4 Q And some was retained by Kik?
 5 A Yes.
 6 Q And is the -- Kik held by the foundation or
 7 by Kik itself special or different than the Kin sold to
 8 the people in the public sale?
 9 A Not that I'm aware of.
 10 Q And is the value of Kin tokens held by the
 11 foundation or Kik greater or less than the value of Kin
 12 tokens held by people in public?
 13 A No.
 14 MR. MURTHA: Mr. Mitchell just asked you if
 15 certain Kin holders had greater rights who held more
 16 Kin. Earlier I think we had talked about status?
 17 THE WITNESS: Yes.
 18 MR. MURTHA: Is that something that's
 19 afforded to somebody who holds more Kin?
 20 THE WITNESS: Statuses, yes. But that's
 21 still the coin itself. Each individual coin has the
 22 same value. So if you have accumulation of more coins,
 23 you have a higher level of status, but it doesn't
 24 affect the value of the individual coin.
 25 BY MR. MITCHELL:

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1 Q And that status is just inside the Kik app?
 2 A Yes, yes.
 3 Q So if someone isn't a Kik app user, there's
 4 no status issued?
 5 A Yes.
 6 Q All right. We've discussed what the
 7 company -- that the proceeds from the private sale were
 8 deposited into Kik's account at TD Bank in Canada. Let
 9 me just ask you some follow-ups after that.
 10 So Kik owned the proceeds of the sales for
 11 the sale of the SAFTs?
 12 A Yes.
 13 Q Were the proceeds of those sales segregated
 14 by each unique purchaser?
 15 A Segregated in what sense? Like all the
 16 funds came into one bank account.
 17 Q So when they went into one bank account,
 18 was there any way that -- in which they were segregated
 19 so that you -- this money was from this person and this
 20 money was from another person?
 21 A No, no.
 22 Q So it was all just one account?
 23 A Yes.
 24 Q And who controlled how the private sale
 25 proceeds were used?

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1 A Who controlled? That was through our
2 budgeting processes that we use.
3 Q Did Kik control that?
4 A Yes.
5 Q And if a private -- if someone had
6 bought -- someone who bought a SAFT after buying the
7 SAFT had wanted to direct how their money was used --
8 like I want it to be used for this part of the project
9 or used to buy this, could they step in and tell Kik
10 that's how I want my money used?
11 A No.
12 Q I'm going to ask you some similar questions
13 about the public sale because we discussed what the
14 company -- the public sale proceeds were received into
15 Kik's Ether wallet and that Kik converted some of the
16 Ether into U.S. dollars and that that was deposited on
17 the account in Silver Gate Bank in California?
18 A Yes.
19 Q So similarly, did Kik own the proceeds from
20 the public sale?
21 A Yes.
22 Q How much of the Ether did Kik exchange for
23 dollars, roughly, while you were still there?
24 A When I left, I don't believe we had that
25 much Ether left, probably five to ten percent of the

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1 convert about a million a week.
2 There was an X amount at the beginning that
3 we did, and a lot of that was based on input from
4 people like Fred and Paul. And I recall Fred's
5 philosophy was generally to do a third upfront and
6 convert, do a third over a period of time, and a third
7 later on.
8 So along those -- and so if can -- if we
9 changed a lot from a policy because of a high rise or
10 failure, we would normally communicate with the finance
11 committee for those -- for those changes.
12 MR. MURTHA: In total during your time, do
13 you have an idea of how much Kik was either up or down
14 on the sale of its Ether?
15 THE WITNESS: Yeah. We did. We kept a
16 spreadsheet that tracked that. So it was a Google doc
17 that every time we did a trade it was inputted. So
18 the -- and I believe that Fred and Paul had access to
19 that. So they could also see right away where we were
20 at overall in our Kik holdings and proceeds.
21 MR. MURTHA: But you don't -- you sitting
22 here today, do you know at the time you left whether
23 Kin was up or down?
24 THE WITNESS: Oh, we were up on the -- on
25 the conversion of Ether?

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1 holdings or what brought in.
2 Q And were the proceeds of the public sale,
3 whether they were in Ether or dollars segregated by
4 each unique purchaser?
5 A No.
6 Q Were there -- was -- were -- when they
7 were -- when -- was Ether all in one wallet?
8 A I think they were multiple wallets, but I
9 can't recall. I didn't -- that was -- a lot of that
10 sort of stuff was done by the controller.
11 Q But was there any effort made to keep a
12 separate wallet or separate account or separate record
13 of these are the proceeds from this individual --
14 A No.
15 MR. MURTHA: Did Kik profit from or lose in
16 the rise or fall of Ether during the time it held --
17 THE WITNESS: Yes. The fixed rate when we
18 did the offering was \$298, I believe, and Ether had
19 risen up to as high as, I believe, 1200.
20 So we had, as noted in the minutes that we
21 talked yesterday, there was a finance committee set up
22 that included individuals of the board. So we had,
23 with the board members, designed a, you know, what
24 the -- what the exchange strategy would be, and it was
25 on that basis that we decided that we would roughly

Page 477

1 MR. MURTHA: Yes.
2 THE WITNESS: Yes, we were up.
3 MR. MURTHA: How much?
4 THE WITNESS: Quite a bit. Probably I'd
5 say close to 15 million.
6 BY MR. MITCHELL:
7 Q And were the proceeds -- when Ether was
8 sold, were the U.S. dollars from that transaction put
9 into a single Silver Gate bank account?
10 A Yes.
11 Q And who controlled how the -- those
12 proceeds were used?
13 A Who controlled how those proceeds were
14 used? At what level do you mean?
15 Q Sorry. Let me ask the question again.
16 Did Kik control how those proceeds were
17 used?
18 A Yes, yes.
19 Q And, again, after the public sale, could a
20 public sale purchaser come to Kik and say I want to
21 use -- the money I gave you, I want it used for this
22 certain project or this role or anything in particular?
23 A No.
24 Q Would you say that Kik pooled the proceeds
25 from the sale of the SAFTs?

Page 478

1 A Yes.

2 Q And would you say that Kik pooled the

3 proceeds from the sale of tokens to the public?

4 A Yes.

5 MR. MITCHELL: Let's take a break for five

6 minutes. We'll go off the record.

7 THE VIDEOGRAPHER: This ends disc number

8 two. Going off the record. The time is 3:33 p.m.

9 (A brief recess was taken.)

10 THE VIDEOGRAPHER: This begins disc number

11 three. We are back on the record. The time is now

12 3:38 p.m.

13 BY MR. MITCHELL:

14 Q During the break did you have any

15 substantive conversations with the staff about the

16 case?

17 A No.

18 Q Okay. And I understand from conversation

19 with your counsel that you had something that you

20 wanted to clarify from before?

21 A Yeah. You used the term pool.

22 Q Yeah.

23 A And so what I understand by that is that

24 we're just receiving all of our funds into one account,

25 bank account. That's my understanding of what pool

Page 479

1 means.

2 Q When you answered yes, that's what you

3 understood it to mean?

4 A Yes. Yeah.

5 Q Okay.

6 A If there's any other, then I don't --

7 that's what I understood it to mean.

8 Q Okay. And was that different than what you

9 were thinking when I asked the question originally?

10 A No. That was what I was thinking at the

11 time when you asked the question.

12 MR. MURTHA: So why did you feel the need

13 to clarify the statement?

14 THE WITNESS: Pardon?

15 (Simultaneous speakers.)

16 MR. MURTHA: Why did you feel the need to

17 clarify the statement?

18 MR. LENCH: Based on consultation with

19 counsel.

20 MR. MURTHA: Okay.

21 BY MR. MITCHELL:

22 Q You're giving us this clarification based

23 on consultation during the break with your counsel?

24 A Yes.

25 Q Okay. So we had discussed that the money

Page 480

1 came into -- some of the proceeds went to a bank in --

2 TD Bank in Canada and some came to Silver Gate Bank in

3 California; that's right?

4 A The presale account funds came into the

5 account in Canada, and the TDE funds after they were --

6 while they were held in Ether and then they were

7 converted and put into the account at Silver Gate.

8 Q In California?

9 A Yes.

10 Q Okay. Has Kik spent some of the proceeds

11 from both those accounts on projects to develop the Kin

12 Ecosystem?

13 A Yes.

14 Q And why is Kik spending the proceeds -- or

15 why did Kik spend the proceeds on those kinds of

16 projects? What's it trying to accomplish?

17 A It's trying to execute on the plan that we

18 produced in the white paper.

19 Q Is Kik trying to attract people to use Kin

20 tokens?

21 A Yes, that would be one of them.

22 Q What other -- is -- are there other things

23 it's trying to do?

24 A Well, yeah. There's people and then also

25 brands and that sort of thing, to get brands to build

Page 481

1 and developers to build on the ecosystem.

2 Q So Kik is doing this work to try to attract

3 people and companies to use Kin tokens?

4 A Yes, yes.

5 Q Why? Why does Kik want to attract people

6 and companies?

7 A Because we're trying to build the ecosystem

8 out to get more developers, more users and everything

9 else in greater velocity in the currency.

10 Q What does velocity mean?

11 A Velocity means the amount that the currency

12 trades. That's the discussion we had yesterday, what

13 the difference is between something like bitcoin, which

14 people buy and hold as opposed to our -- ours is a

15 transactional currency. We want people to constantly

16 buy and sell it.

17 Q And all things being equal, if the velocity

18 of a token increases, would that increase the value of

19 the token?

20 A Effectively over time, yes.

21 Q And is the opposite true if over the -- you

22 know, if in the future fewer and fewer and fewer people

23 are interested in conducting transactions using a

24 token, would you agree that that would lower the value

25 of the token?

Page 482

1 A Yes.

2 Q And then so since the token distribution
3 event has Kin -- Kik --

4 A Sorry. And just to clarify, too, on that
5 point --

6 Q Sure.

7 A -- the price can also go down because
8 there's more currency put into the ecosystem. So it's
9 not necessarily -- the ecosystem could still have
10 really good velocity, but there could be too many coins
11 being released, let's say through the rewards engine,
12 that can also affect the price. It's a number of
13 different factors.

14 Q If the -- but overall, rise and demand
15 would cause value to rise?

16 A Exactly.

17 Q So has Kik been working to increase the
18 potential future value of Kin tokens?

19 A Yes, through talking to developers and
20 other major players that have large user accounts to
21 get their currency incorporated into their ecosystems.

22 Q And sort of recruiting other partners to
23 come in?

24 A Exactly. Either the -- when you say come
25 in, like they could take the Kin currency and just

Page 484

1 had none of that.

2 Q But the work -- Kik's work to -- sorry.

3 Kik has done work to move the Kin project to this fork
4 of the Stellar blockchain?

5 A Yes.

6 Q And was that work done in part because that
7 allows there to be more transactions and less price and
8 more rapidly?

9 A Yes.

10 Q Okay. And is that also, again, to help
11 with -- promote the velocity of the Kin token?

12 A Yes. Sort of equivalent, as I said
13 yesterday, going from dial-up Internet to broadband.

14 Q Okay. And that was an important switch?

15 A Yes.

16 Q So what determines the value of Kin today?

17 A What determines the value of Kin today is
18 the -- well, the things we just spoke about, like if
19 there is a greater demand for the currency, then the
20 price of the currency goes up.

21 Q And, literally, how is the price of the
22 currency set?

23 A It's like the price of any currency, like
24 the U.S. dollar, whatever. It's --

25 Q Set by a market?

Page 483

1 start using the currency in their specific ecosystem,
2 not that they all have to come into Kik.

3 Q Right. They have to come into the Kin
4 Ecosystem overall?

5 A Exactly.

6 Q They have to start to -- it's recruiting
7 people to try to get them to -- either they themselves
8 or have their -- their own users conduct transactions
9 in kin?

10 A Exactly.

11 Q And is Kik also -- is part of that work
12 also Kik's work to put the Kin project on the fork of
13 the Stellar blockchain? Is that work also going
14 towards helping create velocity?

15 A Yes. No. That's -- that is more a
16 function of the underlying technology to allow it to
17 handle more transactions and have a less cost per
18 transaction.

19 So in Ethereum when you have verification
20 of a transaction, you're paying costs for that. So as
21 the price of Ethereum goes up, the cost of the
22 transaction increases. So in Stellar's case, they
23 didn't have a model like that, but you still had to pay
24 for a wallet setup. And so what we were doing was
25 forking Stellar to have a blockchain protocol base that

Page 485

1 A Yes.

2 Q And if -- so if the market price of Kin
3 changes, does that have -- does that affect all Kin
4 equally?

5 A Yes.

6 Q Did you -- people who bought Kin tokens in
7 the token distribution event, were they -- let me start
8 all the way over.

9 Were people who bought Kin in the token
10 distribution event required to help create demand for
11 Kin tokens?

12 A Required?

13 Q Yeah.

14 A It was -- it is -- generally, I don't think
15 it was a requirement, but it's -- generally, as a
16 community people do help to create -- so as an example,
17 Betaworks, they would want to use the currency for
18 assisting for their brands to get our consumers to go
19 to their brands.

20 Q So was -- when Kik sold to Betaworks,
21 was -- did it require like Betaworks was then bound to
22 do that kind of work?

23 A No. There was no requirement for that.

24 Q So then let's take the presale of the
25 people who bought SAFTs.

Page 486

1 Did any of the people who bought SAFTs, was
2 there a requirement put on them they have to help
3 create demand for Kin tokens in the future?

4 A No.

5 Q What about people who bought in the token
6 distribution event?

7 A No.

8 Q Did Kik require people who bought Kin
9 tokens in either of those ways to do anything to
10 support the Kin Ecosystem?

11 A No. There's no requirement.

12 Q And so could Kin owners ban together
13 without Kik and just distribute the six trillion Kin
14 tokens that are held by the Kin Foundation?

15 A No. Because the foundation -- well, it
16 depends on how the distribution algorithms would work.
17 That's where we were concerned about, like once the
18 algorithms were in place that people could band
19 together and basically gain the system.

20 Q Right.

21 A But if someone took -- if a brand took the
22 Kin token and went, let's say, over to Facebook and
23 used the Kin token on Facebook in their ecosystem, yeah
24 it'd be great, right. So it's -- that we had -- there
25 was a lot of discussion about that potential.

Page 487

1 Q The potential that people might use it
2 somewhere else?

3 A Yes, in another ecosystem.

4 Q And that was positive?

5 A Yes.

6 Q But could Kin -- can Kin owners today ban
7 together without Kik and do something to enforce the
8 Kin Foundation to distribute the six trillion tokens
9 the way that those Kin owners wanted them?

10 A No.

11 Q Can Kin owners ban together without Kik and
12 change the Kik messaging app?

13 A Can Kin owners change the messaging app?
14 No.

15 Q Who controls the messaging app?

16 A Currently, right now it's Kik, but
17 that's -- one of the plans was to open-source the Kik
18 messaging app.

19 Q And was the app ever open-sourced?

20 A I'm not sure since I've left, but that was
21 what the plan was.

22 Q As of the time you left, had it been
23 open-sourced?

24 A No.

25 Q And did you expect Kin owners, other than

Page 488

1 Kik to solve the issues around the speed of the
2 Ethereum blockchain?

3 A Yes. We had a lot of input from community
4 people and so we guarded that --

5 Q They gave advice?

6 A Yes.

7 Q But did they do anything to like actually
8 implement a solution?

9 A I'm not sure. That's on the technical side
10 as to who they worked with or who they talked to on
11 that. Like that was -- like in the case when we looked
12 at it initially, that's where there were certain issues
13 that we were looking at that Stellar was going to solve
14 in their community. That's why we were looking at the
15 Stellar app. So had they solved it, we would've
16 used -- probably continued to use Stellar.

17 Q Did they?

18 A No. They weren't moving at the speed that
19 we needed them to move.

20 Q So who moved? Who did it? Who did the
21 work that fast?

22 A I'm not sure who we used down in -- again,
23 these are people in Tel Aviv.

24 Q These are Kik employees? Kik employees did
25 that?

Page 489

1 A Some of them. I don't think all of them
2 were Kik employees. I think they had outside users
3 also, or outside consultants.

4 Q So Kik employees or people Kik had hired
5 did that work?

6 A I'm not sure. I think they were outside
7 people also.

8 Q Just like people who were volunteering
9 their time?

10 A Yep.

11 Q Okay. Who?

12 A The whole basis of the rewards engine, the
13 eventual aim was that it was like a product that the
14 community would evolve on, and then the community
15 would -- could then assess whether -- how that protocol
16 should work.

17 Q And is that -- is that -- is that what
18 happened?

19 A No, it hasn't happened yet.

20 Q So that's an idea, but it hasn't happened?

21 A Yeah. As it's discussed in the white
22 paper.

23 Q As of right now, the people who control the
24 Kin -- up until now, the people who control Kin
25 Ecosystem Foundation control how to distribute those

Page 490

1 six trillion Kin that it holds?

2 A Yeah. That's William and Ted.

3 Q Okay. And before William, it was you and
4 Ted?

5 A Yes.

6 Q Have you ever dealt with anyone at the bank
7 of -- well, this is going to be a very broad question.

8 Have you dealt with anyone at the Bank of
9 Montreal?

10 A We spoke to the Bank of Montreal about
11 whether they would be -- when we went to TD and we
12 were -- we looked at other banks that would take
13 crypto, but we were told Bank of Montreal and, I
14 believe, RBC were crypto-friendly.

15 Q Okay. And so did you talk to Bank of
16 Montreal?

17 A Yes.

18 Q What did you talk to them about?

19 A They were asking us about our views about
20 crypto and that and what the process we went through
21 and -- but I think I got the sense that they were
22 looking more for consulting advice than anything else
23 and so we didn't pursue with them.

24 Q Did you -- did you actually have phone
25 calls with people at bank of --

Page 492

1 actually handling our cash. And I just sort of got
2 that it was a different discussion. So we ceased
3 discussions.

4 Q RBC. Did you talk to RBC?

5 A We had talked. We had discussions with RBC
6 over a long period of time because we had -- even like
7 for over three or four years on different things. In
8 fact, when I think back, it was probably a discussion
9 technically where one of the fellows was talking with
10 the blockchain had no idea what it was about two years
11 earlier and they were talking about doing things on the
12 blockchain.

13 Q That was the first time you'd heard of a
14 blockchain?

15 A Yeah. It was fairly early. Well, outside
16 of what Ted talked about with bitcoin, but that was
17 probably the first conversation I had about blockchain.

18 Q Did you have any conversations with RBC
19 about Kik's view of whether the sale of Kin tokens was
20 the sale of securities?

21 A I can't recall specifically.

22 Q Well, you don't remember one way or the
23 other?

24 A No. A lot of the discussions that we had
25 with the banks was -- because our issue was with the TD

Page 491

1 A I think we had a phone call, yes.

2 Q Who -- who was on your side?

3 A I believe it was Tanner and I, and I can't
4 recall if Eileen was. But it was Tanner and I anyway.

5 Q And did anyone from Bank of Montreal ask
6 you about whether the sale of Kin tokens was the sale
7 of securities?

8 A I can't recall.

9 Q Do you -- did you have any conversations
10 with -- did you or Mr. Philp have any conversations
11 with the Bank of Montreal about the company's Howey
12 analysis?

13 A I can't recall that either.

14 Q You don't remember one way or the other?

15 A No.

16 Q Did you or Mr. Philp talk to Bank of
17 Montreal about the advice that Kik's lawyers had given
18 to the company?

19 A We might have stated to them that -- if
20 they asked us about whether we felt it was a security,
21 we said we believed, based on our analysis of Howey, it
22 wasn't. That statement might have been made, but I
23 don't recall specifically.

24 I know they had asked some questions about
25 it, but that's when we were looking at them for

Page 493

1 was with -- around cryptocurrency in general. And
2 everybody -- just the minute they heard cryptocurrency,
3 there was this reaction. And so we described to them
4 the processes that we went through with respect to AML.

5 So the CIBC specifically, I have no -- a
6 friend of mine's a fairly senior person there, and he
7 was looking at getting us into the CIBC. And then he
8 said that, you know, they just weren't doing anything
9 with crypto and it was a board decision. There were
10 concerns about AML and everything else.

11 And I said, look, I understand the
12 concerns. This is why we -- this is the process we
13 went through. And we followed up like to make sure
14 that we had -- you know, didn't have AML concerns
15 ourselves. And these are the identity and KYC
16 processes we went through.

17 And that was more of the discussions that I
18 had with RBC and BMO was that if we ended up wanting --
19 if these banks were more friendly to crypto as far as
20 where it came from and AML concerns that we would move
21 our banking over to them. And that was more with our
22 objective was in those discussions.

23 Q Did you move your banking?

24 A No, we didn't because none of them moved.
25 They said they may at some point but --

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1 Q CIBC. Does CIBC have a commercial bank and
2 an investment bank in place?

3 A Yes.

4 Q It has both?

5 A Yes.

6 Q All right. The person -- who is the person
7 you were dealing with at CIBC?

8 A A friend of mine. It was Roman Dubczak,
9 and then we also had -- the CEO we had a lot of
10 discussions with them.

11 Q About the commercial banking side?

12 A Yes.

13 Q Did you have any conversations with people
14 at CIBC about the Kin token?

15 A Yes. There was a fellow by the name of
16 Todd who was very -- so CIBC what they did was -- I
17 guess their premise was to get people that would
18 eventually list or companies that would eventually
19 list.

20 So they would have these support sessions
21 in that -- like in Waterloo, they would call together
22 all of the CEOs of different companies, and they would
23 discuss different issues and different things about
24 banking and financing and everything else. And then
25 also they would talk about the institutional side

Page 496

1 at CIBC. I know him, but I didn't have discussions
2 with him about Kin tokens. I believe he'd spoke to
3 Rod.

4 Q Rod McLeod?

5 A Yes.

6 Q Okay. What makes you -- did -- who -- did
7 one of them tell you that they talked about it?

8 A No. I just -- at the time Todd reached out
9 to me, I said you got to talk to Rod. He handles all
10 our communications. And Rod, in turn, would discuss
11 anything with counsel in terms of what we could
12 communicate.

13 Q Okay. And at some point did CIBC -- did
14 you -- did Todd reach out to you with like sort of a
15 report about the Kin token?

16 A I think he prepared a report on the Kin
17 token.

18 Q Okay. And did you -- did you review it?

19 A No, I didn't.

20 Q Did anybody at Kik review it?

21 A Quite likely Rod and counsel would have
22 reviewed it.

23 Q Did you talk to Todd about his report at
24 all?

25 A No.

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1 because their eventual aim was to take a lot of these
2 companies public and do --

3 Q They'd be happy to take Kik public?

4 A Yeah. They would take Kik public, yes.

5 Q So tell me -- so you have -- well, how does
6 that lead to conversations about the Kin token with
7 CIBC?

8 A Those were separate. Those were totally
9 separate conversations.

10 Q Separate conversations?

11 A Right.

12 Q And what were your conversations with CIBC
13 about the Kin token?

14 A In terms of banking or in terms of --

15 Q No, not in terms of banking. All right.
16 Leaving aside the commercial banking side, did you have
17 conversations with people at CIBC about the Kin tokens?

18 A I didn't.

19 Q What about with Todd?

20 A Todd?

21 Q You just said Todd who was supportive.

22 Do you know a person named Todd Coupland?

23 A Yeah. Todd Coupland.

24 Q Who is he?

25 A He's a guy, a research analyst or something

Page 497

1 Q Did you talk to anybody at CIBC about
2 Todd's report?

3 A No.

4 Q Okay. So your time here today, is this --
5 is this part of your consulting agreement that we
6 talked about earlier?

7 A Uh-huh, yes.

8 MR. MITCHELL: Okay. We're going to go off
9 the record.

10 THE VIDEOGRAPHER: Going off the record the
11 time is now 3:58 p.m.

12 (A brief recess was taken.)

13 THE VIDEOGRAPHER: We are back on the
14 record. The time is now 4:01 p.m.

15 BY MR. MITCHELL:

16 Q During the break did you have any
17 substantive conversations with the staff about the
18 investigation?

19 A No.

20 Q Okay. I'm going to give you -- we --
21 earlier we talked about terms of use and I think you
22 may have said you didn't remember seeing it, but I'm
23 going to give you Exhibit 8 which is the -- which is a
24 terms of use. It says -- it has Bates number KIK
25 000079 through 97?

Page 498

1 A Yes.

2 Q Is this -- do you -- is this a document

3 that you remember seeing before?

4 A I think I read it before, but I don't -- I

5 didn't write any of it.

6 MR. MENDEL: Do you remember when you would

7 have seen it?

8 THE WITNESS: No.

9 MR. MENDEL: Can you turn to the page

10 beginning -- or marked by 90 at the lower right?

11 Do you see the section marked assumption of

12 risk?

13 THE WITNESS: Yes.

14 MR. MENDEL: Does this trigger your memory

15 about any experience looking at or reviewing this

16 document?

17 THE WITNESS: No. I can't recall reading

18 this very specifically.

19 MR. MENDEL: Okay.

20 MR. MITCHELL: Look, we appreciate your

21 time. We know two days -- we know that two days

22 sitting here is a long amount of time for you to spend,

23 and it's a significant thing. We do appreciate it.

24 THE WITNESS: Thank you.

25 MR. MITCHELL: It's very helpful to learn

Page 499

1 all this stuff.

2 So at this point we always say if

3 there's something -- is there anything that we asked

4 you that now you'd like to either clarify your answer,

5 add to your answer, anything that you want to -- think

6 might have confused, we're happy to talk about that

7 now.

8 THE WITNESS: No. It's fine.

9 MR. MITCHELL: Okay. And then, Brett, is

10 there anything you want to -- any questions you wanted

11 to ask the witness?

12 MR. DEJARNETTE: No, there's not.

13 MR. MITCHELL: Okay. Then we will go off

14 the record.

15 THE VIDEOGRAPHER: This concludes today's

16 video deposition. This is disc three of three. Going

17 off the record. The time is now 4:03 p.m.

18 (Whereupon, at 4:03 p.m., the examination

19 was adjourned.)

20 * * * * *

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1 PROOFREADER'S CERTIFICATE

2

3 In the Matter of: KIK INTERACTIVE

4 Witness: Peter Heinke

5 File Number: HO-13388-A

6 Date: Friday, September 21, 2018

7 Location: Washington, D.C.

8

9 This is to certify that I, Christine Boyce,

10 (the undersigned) do hereby swear and affirm that the

11 attached proceedings before the U.S. Securities and

12 Exchange Commission were held according to the record,

13 and that this is the original, complete, true and

14 accurate transcript, which has been compared with the

15 reporting or recording accomplished at the hearing.

16

17

18 _____

19 (Proofreader's Name) (Date)

20

21

22

23

24

25

Page 501

1 REPORTER'S CERTIFICATE

2

3 I, Melinda Johnson, CSR, reporter, hereby

4 certify that the foregoing transcript of 235 pages is a

5 complete, true and accurate transcript of the testimony

6 indicated, held on Friday, September 21, 2018, at

7 Washington, D.C. in the matter of: Kik Interactive.

8

9 I further certify that this proceeding was

10 recorded by me, and that the foregoing transcript has

11 been prepared under my direction.

12

13 Date: _____

14 Official Reporter: _____

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